SUPREME COURT, U. S.

APPENDIX

FILED
AUG 13 1974
MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-820

UNITED STATES OF AMERICA,
Petitioner,

—v.—

PASCUAL GUANA-SANCHEZ,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED
NOVEMBER 23, 1973
CERTIORARI GRANTED JUNE 17, 1974

IN THE

Supreme Court of the United States

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—v.—

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INDEX

	Page
Chronological List of Relevant Docket Entries	1
Indictment of February 1, 1972	2
Relevant Portions of Transcript of Hearing on Motion to Suppress of May 12, 1972	3
Government Exhibit 1	75
Relevant Portions of Government's Briefs on Appeal filed October 20, 1972 and January 9, 1973	77
Order Granting Certiorari	79

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
2- 1-72	Filed Indictment Bail: $2,000.00 O.R.
2-28-72	Appointment of Counsel.
3-17-72	Filed defendant's motion to suppress.
3-17-72	Filed defendant's motion to dismiss the indictment.
3-20-72	Defendant's motion to dismiss the indictment is denied.
5-12-72	Hearing on defendant's motion to suppress evidence held and concluded.
6- 8-72	Defendant's motion filed on March 17, 1972 to suppress evidence is allowed and it is so ordered.
6-23-72	Filed Notice of Appeal of U.S.A.
6-29-72	ENTER ORDER correcting order of June 8, 1972 causing the same to read as follows: Defendant's motion filed on March 17, 1972 to suppress evidence is allowed and it is so ordered. The courts ruling from the bench on defendant's motion to suppress evidence shall stand as findings of fact and conclusions of law herein. Motion of the government to incorporate into the record the government's written answer filed herein, is allowed.
8-30-72	Filed Notice (stipulation of record for appeal).
10-20-72	Appeal Brief of Appellant filed.
12-11-72	Appeal Brief of Appellee filed.
7-18-73	Judgment of Affirmance Entered.
7-18-73	Opinion of Court of Appeals filed.
7-18-73	Dissenting Opinion of Judge Pell filed.
7-25-73	ENTERED ORDER denying petition for rehearing en banc.
6-17-74	Petition for a Writ of Certiorari Granted.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

February, 1972

No. 72CR50
Violation: Title 8, United States Code,
Section 1324(a)(2)

The JANUARY 1972 GRAND JURY charges:

That on or about November 17, 1971,

PASCUAL GUANA-SANCHEZ,

defendant herein, did wilfully and knowingly transport and move within the United States from San Antonio, Texas, to Villa Park, in the Northern District of Illinois, Eastern Division, by means of a motor vehicle, Juan Mata-Zapata, Agustin Olivares-Hernandez, and David Perez-Gutierrez, aliens not lawfully entitled to enter and reside within the United States under the Immigration and Naturalization laws in furtherance of the violation of such laws, knowing that said aliens, Juan Mata-Zapata, Agustin Olivares-Hernandez, and David Perez-Gutierrez, were in the United States in violation of such laws and knowingly and having reasonable grounds to believe that Juan Mata-Zapata, Agustin Olivares-Hernandez, and David Perez-Gutierrez had last entered into the United States less than three years prior to November 17, 1971;

In violation of Title 8, United States Code, Section 1324(a)(2).

A TRUE BILL:

/s/ [Illegible]
Foreman

/s/ [Illegible]
United States Atorney

EXCERPTS OF TRANSCRIPT OF MAY 12, 1972

[41] THE CLERK: 72 CR 50, United States of America vs. Pascual Guana-Sanchez; hearing on defendant's motion to suppress evidence.

• • • •

MR. BEELER: Well, I think the Government is going to proceed in that they have stipulated that the arrest was without warrant for arrest or for search.

Am I correct?

MR. STEVENSON: Well, we have so stipulated, Judge, in the interest of time, and so forth. We are prepared to put our witnesses on.

THE COURT: All right. I keep forgetting the witness stand is on that side now. I keep looking over there. Put your first witness on.

[42] MR. STEVENSON: All right, Judge. Please take the witness stand.

(The witness was thereupon duly sworn.)

PAT VINCENT TENUTO,

called as a witness by the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. STEVENSON:

Q State your full name, please, and spell your last name.

A Pat Vincent Tenuto; T-e-n-u-t-o.

Q What is your business or occupation, please.

A Patrolman for the Village of Villa Park.

Q How long have you been so employed?

A Just under three years.

Q All right. Calling your attention to—

THE COURT: May I inquire where Villa Park is. Do you mind?

MR. STEVENSON: That is part of what I was going to ask him, Judge.

THE COURT: Yes. Sort of locate it and the [43] nature of the organization of the police department.

MR. STEVENSON: All right.

BY MR. STEVENSON:

Q Did you understand the question?

A Yes.

Q Would you please answer it.

A It is about 17 miles straight west of Chicago. It lies in between North Avenue and Roosevelt Road. It is just about—

THE COURT: Sort of about Lake Street?

THE WITNESS: Yes. We are just a little bit—about a mile south of Lake Street.

THE COURT: If you keep on going out that way you will get to Addison?

THE WITNESS: Do you know where Addison, Illinois is?

THE COURT: Yes.

THE WITNESS: We are the next town south.

THE COURT: Before you get to Addison?

THE WITNESS: Yes. We are just south of Addison.

THE COURT: South of Addison.

[44] BY MR. STEVENSON:

Q Would you describe the type of suburb that Villa Park is in terms of the kind of industry, if any, that is there and the number of persons that live there as opposed to working there.

A Well, the population is about twenty-five to 30,000. The town is basically half residential, half industrial.

Q And is the industry that is there any particular kind of industry as opposed to another kind?

A Mostly small business and factories.

MR. STEVENSON: Is there any other along that line, your Honor?

THE COURT: He might describe the ethnic composition of the town.

THE WITNESS: It is all different types of groups. As far as nationality is, your Honor.

THE COURT: Yes.

THE WITNESS: I have encountered all different types.

MR. BEELER: Your Honor, I would object. The answer is not intelligible.

THE COURT: Well, it is subject to cross-examination. He said all different types.

[45] BY MR. STEVENSON:

Q Well, specifically, Officer, in your educated guess, what is the percentage of white persons who live there?

MR. BEELER: I object to his educated guess as well.

MR. STEVENSON: Well, Judge, is he supposed to know exactly, if the Court please? I am trying to—

THE COURT: Well, the phrase "educated guess" is a word of art. I mean, "What is your best guess?" That is the same thing.

MR. STEVENSON: All right.

BY MR. STEVENSON:

Q In your opinion, what is the percentage of white persons living there?

A About 95, 98 percent.

Q And the percentage of non-white is obvious. Of that non-white population, what would be the percentage of black persons who live there?

THE COURT: Do you mean black in color or in race?

MR. STEVENSON: Black in race, Judge, is what [46] I meant, as opposed to Orientals or some other—

THE COURT: I see.

THE WITNESS: I am sorry, but I am not certain of the question.

BY MR. STEVENSON:

Q Of the non-white five or ten percent who live there, what percentage would you guess are black persons?

A From what I can recall, there are about two black families in the town.

MR. STEVENSON: All right. Anything else, Judge?

THE COURT: How about Oriental or—

BY MR. STEVENSON:

Q Orientals?

A There are quite a few orientals and quite a few Mexicans. I couldn't give you an exact number. I really don't know.

THE COURT: By "Orientals," you mean Japanese?

THE WITNESS: Yes, Japanese, Chinese.

THE COURT: Go right ahead.

MR. STEVENSON: May I proceed?

THE COURT: Yes.

[47] BY MR. STEVENSON:

Q Calling your attention to on or about November 17th, 1971, were you working at your job at that time?

A Yes, I was.

MR BEELER: Your Honor, at this time I would object to the testimony of the witness on the ground that he was present in the courtroom this morning when we had a dress rehearsal of the motion to suppress. He wasn't excluded as a witness. I think that this will render incompetent any of his testimony regarding the subject matter of the discussions this morning. I so move it be suppressed.

THE COURT: I think it can be cleared up by allowing you a wide range of cross-examination. It can stand. Objection overruled.

BY MR. STEVENSON:

Q Were you working on that day?

A Yes, I was.

Q And what were your hours of employment, sir?

A 11:00 P.M. on the night of the 16th to 7:00 P.M. the morning of the 17th.

Q Who, if anyone, were you working with at that time?

A Norman Hall was my partner that night.
[48] Q Were you in uniform?
A Yes, sir, I was.
Q And were you working in a marked vehicle?
A Yes, sir.
Q What was the nature of your duties?
A My partner and I were responsible for all the traffic and patrol duties for the north side of town.
THE COURT: North side? How do you distinguish one part from the other?
THE WITNESS: St. Charles Road is toward approximately the center of town. It is the dividing line. One car handles everything from St. Charles Road north and another car St. Charles Road south, plus a third car, which is the sergeant, he covers both sides of town as our supervisor and back-up unit.
THE COURT: Is there any distinction between the north and the south? Is one more industrial than the other?
THE WITNESS: I would say about half and half.
THE COURT: I see.
THE WITNESS: There is really no difference.
THE COURT: You know, we sometimes think of [49] Chicago, its north side as being the rich side, the south side being the poor side. That isn't the case out there?
THE WITNESS: No, sir.

BY MR. STEVENSON:

Q How many other officers, if any were working at the time you and your partner were working?
A Two others.
Q Now calling your attention to some time about 2:30 a.m., approximately, on the day indicated, did you have occasion to see the defendant in this case?
A Yes, sir, we did.
Q And do you know his name to be Mr. Sanchez?
A Yes, sir, I do.
Q Will you point him out for the record.
A The gentleman sitting next to his attorney (indicating).

MR. STEVENSON: Your Honor, may the record show—

THE COURT: The record may show the witness has identified the petitioner in this Civil Action.

MR. STEVENSON: All right.

[50] BY MR. STEVENSON:

Q And describe the circumstances of your first observation of this defendant, please.

A At the time my partner and I were running radar. We had stopped a vehicle who was doing over the speed limit at North and Addison Road. We got out of our car—

THE COURT: Where is that located, on the north side or—

THE WITNESS: It is on the north side, far north.

THE COURT: Very far north?

THE WITNESS: Approximately, yes. I would say maybe about a half a mile from Addison's jurisdiction.

THE COURT: I see.

THE WITNESS: That is really the only way I could describe it.

BY MR. STEVENSON:

Q All right. After this traffic stop, then what happened, sir?

A My partner went up to the driver and asked him for his driver's license—

Q Wait a minute. Are you referring—

[51] A To the traffic stop.

Q All right.

A I was on the right side of the vehicle. I looked up and I noticed a station wagon parked kitty corner to where we had stopped the vehicle we were talking to now.

Q All right. In terms of feet from where you were, how far would you say it was to the car parked kitty corner from you?

A 150, 200 feet.

Q All right, and describe the car that you saw—strike the question.

What, if anything, did you observe about the car that you saw parked kitty corner from you?

A We noticed—I noticed that the car was completely off the road, over the curb in a vacant lot. The headlights were on and the interior dome light was on.

Q How far from the road was that car?

A 15, 20 feet maybe.

Q Describe the immediate surrounding area of where that car was off the road.

A It would be the industrial section in that [52] section of town.

THE COURT: Is it in a sort of driving area or on the grass or what?

THE WITNESS: Where the car was?

THE COURT: Yes.

THE WITNESS: It is a wooded area. It is like a big clearing in that intersection there. About the size where you could put up maybe a good sized gas station cleared out this much. It was just dirt and gravel.

THE COURT: I see. That was the southeast corner?

THE WITNESS: That would be the northeast corner where the car was.

THE COURT: And you were—

THE WITNESS: On the southwest corner.

THE COURT: That was northeast?

THE WITNESS: Yes, sir.

BY MR. STEVENSON:

Q Were there any persons in that car?

A We could tell there were about three or four people sitting in the car.

Q And were you able to see what, if anything, [53] anyone in the car was doing.

A It appeared that someone—we could see the top part of a paper. I figured it was a map. It looked like the person was lost.

Q Now, how long did you spend on your initial traffic stop there with some other person?

A No more than a minute.

Q And what did you do after completing that?

A My partner and I started to walk back to the squad car. I told him there was a station wagon parked across the street, in the lot with the inside light on. So I said, "Let's go over and see if they are lost or anything is wrong."

Q All right. So did you do that?

A Yes, we did.

Q By what means did you get from where you were to where they were?

A By the squad car; got back in the squad car and crossed the street.

Q All right. Between the time that you entered your squad car and when you next exited, what, if anything, did you do?

A We pulled behind the car, both of us got out; [54] my partner approached the driver's side, I approached the passenger's side.

Q Did you use your radio communication in any way?

A Yes, we did.

Q And describe how you used it.

MR. BEELER: Objection. There is no foundation as to the time sequence.

MR. STEVENSON: I initially stated, Judge, in the area of about 2:30 a.m. I will ask him now, if I may—

THE COURT: Yes, with relation to his pulling up, when—

MR. STEVENSON: All right.

BY MR. STEVENSON:

Q About what time did you pull up behind the defendant's car?

A About 2:32, 2:33.

Q All right, and describe what you did, if anything, before you exited the car.

A We are required before we get out of the car for inspecting a vehicle or traffic stop, or whatever reason at all we have to get out of the car, we have [55] to radio in what we are doing, where we are going to be at and, if it is a car, we have to radio in the license number.

Q Well, as opposed to what you are required to do, what did you do in this instance?

A This is what we did.

Q All right. Now, at my request, did you bring anything with you this afternoon?

A Yes, I did.

Q And what do you have?

A A copy of the radio log that all the departments are required to keep.

Q And what day is the radio log that you have with you?

A Starting from the 16th at 11:00 P.M. to the 17th at 7:00 P.M.

Q May I have, it please.

A (Proffering document.)

MR. STEVENSON: With your permission, this will be marked as Respondent's Exhibit 1 for identification.

THE COURT: Surely. Do you want to substitute a photostat for it?

[56] MR. STEVENSON: If that would be all right with the Court and with Counsel.

THE COURT: Yes. You have no objection?

MR. STEVENSON: Should I mark it myself?

THE COURT: Yes, you may mark it.

MR. BEELER: I have no objection to it being marked. It hasn't been offered yet.

THE COURT: No.

MR. BEELER: I am reserving any objections I may have until I see whether or not it is properly authenticated.

THE COURT: Very well.

MR. STEVENSON: May the record show I am tendering it to Counsel at this time for his examination.

THE COURT: Yes.

MR. BEELER: Thank you.

THE COURT: Are there any houses around there?

THE WITNESS: No. In that particular section it is all industrial, industrial, small businesses. The residential section starts about maybe half a mile south.

THE COURT: Farther south?

[57] THE WITNESS: Yes.

THE COURT: About your police department, is it full-time?

THE WITNESS: Yes, sir, it is.

MR. BEELER: Your Honor, may I have a minute to examine this radio log? Could we have a recess in the testimony while I am examining it?

MR. STEVENSON: Judge, I would ask if I could lay my foundation for it and then before it is submitted, perhaps, so that—

THE COURT: He said "half a minute."

MR. BEELER: It is somewhat cryptic and that is why I have to study it.

MR. STEVENSON: I think, Judge, if he gives the witness an opportunity to point out what it is we are interested in, it might clear up the problem, if that would be all right.

MR. BEELER: Well, the witness can do that after it is admitted into evidence.

BY MR. STEVENSON:

Q May I hand back, Mr. Witness, what has just been marked as Respondent's Exhibit 1 for identification, purporting to be a Xerox copy of the radio report to which [58] you have just testified. Can you identify that document?

A Yes, I can.

Q And what is it?

A It is a copy of the original radio log.

Q All right. Who made the copy?

A I made it, or I had a cadet make a copy. I was standing there watching him.

Q After you made the copy did you compare it with the original?

A Yes, I did.

Q And is it a true and accurate copy?

A Yes, it is.

Q Now, is that radio report kept in the regular and ordinary course of your police business in Villa Park?

A Yes, sir, it is.

Q And is it part of the police business to keep and maintain that radio log?

A Yes, sir, by orders of the Federal Communications System.

Q Are the entries made on—

THE COURT: It is?

THE WITNESS: Yes, sir. All police departments are required to keep some type of radio log on all [59] transmissions.

BY MR. STEVENSON:

Q Are the entries made on that—

THE COURT: The question is whether you do it or not.

THE WITNESS: Yes, sir. Well, our department, I definitely can say we do it. I can't speak for the other departments surrounding us.

BY MR. STEVENSON:

Q Are the entries made on that exhibit made at the time of or soon after the events recorded have occurred?

A They are recorded immediately when we call in.

Q All right. Now I call your attention to the document and ask you if your particular radio communication is indicated?

A Yes, it is.

Q And where is it indicated?

A The second line on page 2.

Q All right. Do you recognize the handwriting of that entry?

MR. BEELER: Your Honor, it is not offered into evidence yet.

[60] MR. STEVENSON: I haven't gotten to that point yet, Judge. I think is the final foundation question.

THE COURT: He may answer.

BY MR. STEVENSON:

Q Do you?

A Yes, I do.

Q And whose is that writing?

A It is our night radio dispatcher, Joan Block.

Q And was that person on duty at the time we have been referring to?

A Yes, sir, she was.
THE COURT: She?
THE WITNESS: It is a woman dispatcher.
THE COURT: I thought you said that the cadet—
THE WITNESS: No, the cadet made a copy of this during the day.
THE COURT: Oh, I see. The cadet rolled it off?
THE WITNESS: Yes.
THE COURT: How many cadets do you have?
THE WITNESS: Two.
THE COURT: How many policemen?
THE WITNESS: Including the chief lieutenant, [61] we have approximately 30, 35.
THE COURT: But just two were on duty on the north side and two on the south side and one vehicle with the commander?
THE WITNESS: On that particular night there were two on the north side, one on the south and the commander.
THE COURT: Out of 35 police officers there were four on duty?
THE WITNESS: Yes, sir.
MR. STEVENSON: Judge, at this time, if it please the Court, I do offer this into evidence for purposes of this hearing.
MR. BEELER: No objection, your Honor.
THE COURT: Received.

(And thereupon Respondent's Exhibit No. 1 was received in evidence.)

BY MR. STEVENSON:

Q All right, now, again, point to your particular radio transmission and indicate for the record page 2—
A Page 2, line 2.
Q —and tell what the entry is, please.
A At 2:33 in the morning it shows that Officer [62] Hall and I were checking out a—
MR. BEELER: Objection.

BY MR. STEVENSON:

Q Just read what it says.

A Okay, it shows—

THE COURT: No, let him go ahead and spell it out the way he chooses.

MR. BEELER: We would like to know what it says first.

THE COURT: He can tell us what it says.

THE WITNESS: Okay. At 2:33 in the morning our car, which was at that time 130, it shows that Officer Hall and I were checking out at North and Addison with a car, license number CV 4433.

BY MR. STEVENSON:

Q All right. When you say it shows you were checking out—is that the term you used? What does it show you were doing at that point?

A It shows that we were busy with this car.

THE COURT: But are the words "checking out" used there?

THE WITNESS: We use signals. "10-6," which means we were busy checking out, and we give the [63] license number, which automatically means to the desk they are busy checking out this car.

THE COURT: 10-6 means—

THE WITNESS: It is a code for "busy."

THE COURT: That is the international code of police communications?

THE WITNESS: Yes, sir.

THE COURT: And 10-6 is checking out, that is, that you are investigating a situation, isn't that right?

THE WITNESS: Yes, sir.

THE COURT: Where was your 10-20?

THE WITNESS: North and Addison.

THE COURT: Is that where your 10-20 was?

THE WITNESS: Yes, sir. It shows right on the log here.

THE COURT: And you were investigating a car located at North and Addison?

THE WITNESS: Yes, sir.

THE COURT: 10-6 is an investigation of a car where the 10-20 was North and Addison, right?

THE WITNESS: Yes, sir.

MR. STEVENSON: All right.

[64] BY MR. STEVENSON:

Q Now, after making this radio communication, did you exit your car?

A Yes, sir, we did.

Q And what happened next?

A Officer Hall went up to the driver's side; I went over to the passenger's side. Officer Hall asked the driver if anything was wrong or if we could be of any help.

Q All right. What, if any response, was made?

A The driver said that they were looking for a restaurant on North Avenue that a friend of his owned.

Q Who was the driver?

A Mr. Sanchez.

Q Is that the man you pointed out earlier?

A Yes, sir, it is.

Q What further conversation occurred, if any?

MR. BEELER: Your Honor, we would object to any further conversations.

THE COURT: Why?

MR. BEELER: Miranda v Arizona.

MR. STEVENSON: Judge, there is no custody here. There is no suspect. There is no investigation of any crime.

[65] MR. BEELER: They were investigating—10-6.

MR. STEVENSON: You can investigate without investigating a crime, Judge. Where is the custody, if the Court please?

THE COURT: I think that the 10-6 is broad enough to include any situation that involves their just looking to see what they can see and it does not really involve the Miranda tning at this time. He may go ahead.

MR. STEVENSON: I might remind the Court there is no mention before this Court to suppress on Miranda grounds any statements or anything of the sort.

THE COURT: At this time.

MR. BEELER: Your Honor, I would correct that impression. The motion to suppress states, I believe on page 1, to set the record straight—no, on page 2, item 3 of the motion to suppress and dismiss. So I think that is an issue involved.

THE COURT: It is an issue. He can go ahead.

BY MR. STEVENSON:

Q All right. Before I ask you to continue on that, I would ask you, how many persons, if any, were in the car other than the driver?

[66] A Including the driver, there were four.

Q And how were they positioned in the car?

A Mr. Sanchez behind the wheel, another passenger by the right front door, and two passengers, one right behind Mr. Sanchez and another one right behind the passenger in front.

Q What, if anything, were the passengers doing?

A The passenger behind Mr. Sanchez was asleep and the other two were just sitting there.

Q All right. What, if anything, did you observe inside the car while you stood there?

A I observed approximately three shopping bags that looked like they contained some type of clothing or material.

Q All right, and what was Mr. Sanchez doing at the time?

A He had a map in his hand and he was looking for this restaurant.

Q All right. Could you tell us what the map was of?

A It looked like a state map of Illinois or the Chicagoland area.

Q Okay. Continue then with the conversation from [67] the point of the restaurant where you left off.

A We asked him if he knew the name of the restaurant or could give a better location. If I remember right, he said he didn't know the name, he just knew it was on North Avenue someplace in Lombard. Then he stated that if he couldn't find that he was looking for a Beef & Barrel.

THE COURT: Do you want to put that in quotes? Would that have meant to you then the name of a place?

THE WITNESS: Yes.

THE COURT: Beef & Barrel? Do you know a Beef & Barrel?

THE WITNESS: I know of one in Lombard, which is the town next to us.

THE COURT: What is the Beef & Barrel?

THE WITNESS: It is a restaurant. I have never really been in there but I—

THE COURT: Where they serve hamburgers and beer?

THE WITNESS: I have never been in there.

THE COURT: But they do have a Beef & Barrel in Schiller Park?

[68] THE WITNESS: In Lombard.

THE COURT: How far north of Lombard are you?

THE WITNESS: Lombard is the town just west of us. We are in between Elmhurst and Lombard.

THE COURT: Yes. Lombard is on Roosevelt Road on your way to DeKalb?

THE WITNESS: Yes.

THE COURT: And Schiller Park is just east of Lombard?

THE WITNESS: Villa Park is just east of Lombard.

THE COURT: Yes. It extends over toward Addison?

THE WITNESS: Yes.

MR. BEELER: Your Honor, at this time I would like to make a motion. I just observed that the other police officer is still in the room, despite your indication this morning that the motion to exclude witnesses would be proper when the testimony began. I feel that—

MR. STEVENSON: I have no objection to the other officer leaving, Judge.

THE COURT: All right.

[69] MR. BEELER: I feel the officer has violated what was clearly your attempt this morning when you ruled—

THE COURT: No, he hasn't violated anything, I haven't made any ruling.

MR. BEELER: All right. I would ask that the Government's witnesses be excluded during the testimony and that they be directed not to talk with one another until this case is decided regarding the subject matter—

THE COURT: Well, both sides may have the same motion.

MR. STEVENSON: All right, we move to exclude any defense witness as well, Judge.

THE COURT: They may be excluded. Both sides will instruct their witnesses not to converse with each other about the testimony that is going on—about the testimony.

MR. BEELER: Thank you, your Honor.

THE COURT: Exclude your witnesses.

BY MR. STEVENSON:

Q What was the conversation after the mention of the Beef & Barrel Restaurant?

[70] A He said he was looking for this restaurant. He had a matchbook that had the Beef & Barrel on it with the address on Butterfield Road in Lombard.

Q Now, when you are referring to "he"—

A Mr. Sanchez.

Q All right. Up to this time did any of the other occupants do or say anything?

A No. They just sat there.

Q All right. What happened next?

A We told him where—

THE COURT: Who did the talking?

THE WITNESS: I think the other officer.

THE COURT: I see.

THE WITNESS: I was on the other side of the car.

THE COURT: The other officer told him—

THE WITNESS: Yes.

THE COURT: That is what you were about to—

MR. BEELER: Right. I wasn't sure who the "we" was—

THE COURT: When you say "we" why, he would want to know which of the two of you were doing the talking.

[71] THE WITNESS: The other officer was doing the talking. I was on the other side. I could hear what was going on.

BY MR. STEVENSON:

Q All right. What did he say?

A We told him which direction the Beef & Barrel was. We—I went back to the squad. I radioed some of the other towns if they knew of an all night restaurant that was open in their town which might have been the owner, his friend, and the other towns replied that all the restaurants are closed after midnight or 1:00 o'clock.

THE COURT: Did he give the name of the owner?

THE WITNESS: If he did, I don't recall it.

If I remember right, he didn't—

THE COURT: Do you mean the owner was a friend of Mr. Sanchez?

THE WITNESS: Yes, sir, but I believe he couldn't recall the name of the restaurant and I don't believe we asked him the name of the owner. If we did, I don't recall.

THE COURT: Go ahead.

BY MR. STEVENSON:

Q After the radio communication to the other [72] towns, what happened next?

A We asked him for some type of identification and he produced a driver's license.

Q When you say "we", who—

A Or Officer Hall asked him for some type of identification.

MR. BEELER: Objection. At this time, your Honor, I would renew my motion predicated on Miranda v. Arizona and the cases following that, and I will also interpose various Illinois cases and United States vs. Conto Sirano, 430 Fed. 2nd, a Seventh Circuit case recently affirmed by the Supreme Court.

THE COURT: The time to assert a Miranda situation, which properly would be asserted by a motion to strike is after the witness has had an opportunity to put in evidence what actually happened.

MR. BEELER: I don't believe there is any rule against being—

THE COURT: Premature?

MR. BEELER: —premature.

THE COURT: All right.

MR. BEELER: I just have an objection to—

[73] THE COURT: It is just that you are premature.

MR. BEELER: —to the question and to the answer that it is designed to elicit.

THE COURT: I have to hear it and then strike it, if it is to be stricken.

MR. STEVENSON: I don't recall what the last answer was.

THE WITNESS: Officer Hall asked him—

MR. STEVENSON: For identification. All right.

BY MR. STEVENSON:

Q Di the defendant give Officer Hall anything in your presence?

A A valid Illinois driver's license.

THE COURT: A what?

THE WITNESS: Illinois driver's license. A valid license.

THE COURT: "Valid"?

THE WITNESS: Illinois driver's license.

THE COURT: How did you know it was valid?

THE WITNESS: I checked the expiration date.

THE COURT: Oh, I see. "An apparently valid Illinois driver's license."

THE WITNESS: Yes, what appeared to be a valid [74] Illinois driver's license.

MR. BEELER: At this time we would object to the answer based on Miranda vs. Arizona and also, of course, the Fourth Amendment. There is no probable cause to require Mr. Sanchez to produce private papers. We would also object to everything which follows this particular juncture in this investigation.

THE COURT: Well, he didn't say that he required him to produce it; he said he asked him for identification and he produced it.

MR. BEELER: He also stated that he was a policeman in uniform, that he was driving a marked car, and I think the cases are universal in holding that when a person consents to that kind of request from a uniformed police officer that is not a waiver of any rights the person has.

THE COURT: No, it wouldn't be a waiver.

MR. BEELER: It is not an intentional relinquishment of a known right.

THE COURT: It wouldn't be a waiver of that right. At the same time, it doesn't impoverish the nature of the testimony now. He can testify [75] to what he did. It is still a little premature.

BY MR. STEVENSON:

Q Again would you pick it up from the point of the driver's license, please.

A We asked Mr. Sanchez if he had any identification and he produced a valid Illinois driver's license.

MR. BEELER: Objection. Okay. Well, your Honor, I am going to object to that.

THE COURT: We are right back where you objected the last time so let's move on from here and then come up with another one.

MR. BEELER: Well, I am not objecting on the same ground, although I would like to have a continuing objection to everything that follows here on the grounds stated earlier.

THE COURT: You have a standing bill on that.

MR. BEELER: Okay, but I am objecting to this answer on the ground that it begins "We told him," therefore, it is unintelligible. Also, it doesn't relate to the conversation, the characterization. I think he should answer as to what he said.

THE COURT: To the best of the witness's ability he should say, "He said; I said" or "the [76] other officer said." You may proceed.

BY MR. STEVENSON:

Q You have the driver's license. Now what happens?

MR. BEELER: Your Honor, you have ruled on my

objection and I gather you have sustained it—my motion to strike the answer.

THE COURT: No, I neither struck nor did I sustain nor overrule you. I just said "We will go on from here." It is without prejudice to your objecting later on it. You may proceed.

MR. BEELER: Are you denying my motion then? I just want the record to be clear as to whether that answer is in evidence or not.

MR. STEVENSON: May I proceed, Judge?

THE COURT: If you stand on your motion I will have to deny it without prejudice. You may proceed.

BY MR. STEVENSON:

Q After Officer Hall obtained the driver's license, what happened next?

A Officer Hall asked the other three gentlemen in the car for some type of identification.

Q What did he do with the driver's license?

[77] A He gave it back to Mr. Sanchez. I believe he gave it back to Mr. Sanchez. I can't recall offhand.

Q All right. After making this request of the other three persons, what did they do or say?

A They shrugged their shoulders and went kind of like this. (Demonstrating.) Like "What is he talking about? I don't understand him," "You know, what does he want?"

MR. STEVENSON: All right, indicating for the record palms outward, a shrug of the shoulders, if the Court please.

THE COURT: Very well.

BY MR. STEVENSON:

Q Then what did Officer Hall do?

A He asked them again and got the same reaction.

Q All right.

A Then he asked Mr. Sanchez if he spoke Spanish and could ask them if they had any identification.

Q All right. Did he do that?

A Yes, he did.

THE COURT: You knew that it was Spanish?

THE WITNESS: Mr. Sanchez told them something. We were taking it for granted that he was asking, [78] "Do you have any type of identification on you?"

THE COURT: You don't understand—

THE WITNESS: We don't know for sure.

THE COURT: You don't know for sure?

THE WITNESS: No, sir. We were taking it for granted this is what he asked.

BY MR. STEVENSON:

Q All right, after he said something in Spanish—

THE COURT: He said he doesn't even know whether it was in Spanish.

MR. STEVENSON: All right.

BY MR. STEVENSON:

Q After he said something in a language you did not understand, what did the three persons in the car do or say?

A They shook their heads "No" to give the impression that they didn't have anything, except for the person in the front seat; he took out a card and gave it to us.

Q All right. Was the fourth person that you mentioned earlier sleeping at this time or—

A Yes. He was the person behind Mr. Sanchez.

Q All right. So what did he do or say, or was [79] he still sleeping?

A When Mr. Sanchez asked for some type of identification from them, if they had any, the guy, the person sitting next to him woke him up.

Q All right. After they indicated a shake of their heads to whatever was said by Mr. Sanchez, then what happened?

A The person sitting in the front seat handed Officer Hall some type of card.

Q All right. Did Officer Hall tell you what it was or show you what it was?

A He showed me what the card was.

Q What was it?

A It was some type of card. It was written in Spanish. I saw the words "Army," "military," and "Mexico." So I took it to be a Mexican Army I.D. card.

Q All right. What was done with that card at that time?

A It was given back to him.

Q What happened next?

A The other two in the back shook their heads, "No" to give the impression that they didn't have anything. Officer Hall asked Mr. Sanchez to repeat the [80] question to them to make sure that they understood it, and he repeated it about two times, that that was the question he asked them.

Q All right. What happened next?

A Due to the fact that it was 2:30 in the morning and it was in an industrial area, we didn't know who they were, and we have had some type of burglaries in that area—

MR. BEELER: Object to that, your Honor. There is no foundation for that type of—

THE COURT: Sustained.

BY MR. STEVENSON:

Q All right, just what did you do?

A We called the sergeant over the radio. We told him that we had two persons without any I.D. cards or identification, and the sergeant came up and—

Q All right, how long after you called him did he come to you?

A A minute or two?

Q Then what happened?

A We asked the two gentlemen or asked Mr. Sanchez to have the two gentlemen in the back if they would get out of the car.

[81] Q All right. Did they get out?

A Yes, they did.

Q And what did they do when they got out of the car?

A The sergeant, due to the fact that they didn't have any identification on them, the sergeant asked if they would mind coming to the station through Mr. Sanchez.

MR. BEELER: Your Honor, I am going to object to that. He said that a person, that is, a sergeant, due to the fact that they had no identification, asked them if they would go to the station, which means that this officer who is testifying knows what was in the other man's mind. I think that is incredible.

THE COURT: He said that he asked them to produce identification. Would you change that "due to the fact that they didn't produce any."

MR. BEELER: I would still object to the answer. He doesn't know why the police officer asked them to come to the station, unless he was told, and then he can relate a conversation. But he is looking into his mind.

THE COURT: After having asked them to produce [82] any identification and their not having produced it, he then asked them to come to the station.

THE WITNES: If they would come to the station so we could check—

THE COURT: Did he say if they would or did he tell them to come to the station?

THE WITNESS: I believe he asked them.

THE COURT: How?

THE WITNESS: Through Mr. Sanchez. The only way we did everything was through Mr. Sanchez.

THE COURT: Do you recall the words he used?

THE WITNESS: Not offhand.

THE COURT: Was it "Will you come to the station" or "Come to the station"?

THE WITNESS: It was more like, "We would like you to come to the station so we can run a check on the two to make sure that they are not wanted for anything, they are not criminals" or just a general check to see who they were.

THE COURT: If you come to a corner and see a car and you see someone sitting in a car—this is day, night or otherwise—do you customarily approach that car and ask the person in it, not [83] just the driver, but the other persons in it, to produce identification, and if they fail to produce identification, then you take them into the police station to see who they are?

THE WITNESS: This is done at night.

THE COURT: Why at night?

THE WITNESS: Because we have had quite a few burglaries in the industrial area, it being that time of morning without any identification, we don't know who they are, what they are doing there—

THE COURT: But suppose you don't; do you have to?

THE WITNESS: It is standard operating procedure for our department.

THE COURT: That is SOP, standard operating procedure. Go ahead.

MR. BEELER: Your Honor, he did relate in answering your question once again something about burglaries without any foundation and I would ask that that be striken.

THE COURT: Well, he is explaining the reason for this SOP. It doesn't relate to this car. It [84] is just as a matter of standard operating procedure "we asked them to come on in and help us find out who they are if they don't have any identification."

MR. BEELER: All right.

THE COURT: (Addressing the witness) And that means any car you come across?

THE WITNESS: During the night shift that we have occasion to stop or check out for some reason.

THE COURT: What are the reasons that you would stop or check out?

THE WITNESS: Either a traffic violation or if we saw the car parked off the road, such as Mr. Sanchez, or if we see a car parked on the side of one of the factories with some people in it.

THE COURT: This is to clear up any suspicion in your mind that they may be doing something wrong?

THE WITNESS: Yes, sir.

THE COURT: If you see them changing a tire you know they aren't doing anything wrong at that moment?

THE WITNESS: Well, especially if we see another flat tire there, but we still ask them for some type of identification.

[85] THE COURT: Because they still might be using that as a hoax?

THE WITNESS: Yes.
THE COURT: You are doing a general 10-6 of the whole area?
THE WITNESS: Yes, sir—or not of the whole area, the persons there.
THE COURT: I see.
MR. STEVENSON: All right.

BY MR. STEVENSON:

Q Did the two persons exiting Mr. Sanchez's car enter the police vehicle?
A Yes, sir, they did.
Q And what happened with Mr. Sanchez and the other person?
A Officer Hall asked him if he wouldn't mind coming to the station so we could check out the two persons who did not have any identification.
Q And what was said in answer to this request?
A He says "Fine, I will come with you."
Q Did you then go to the station?
A Yes, sir, we did.
Q All right. Now, how far is the station in [86] distance, in miles, from the point of the stop—or I don't mean that—from the point where they entered your police vehicle?
A From the stop to the police station?
Q Yes. Well, the car was stopped when you got to the scene, wasn't it?
A Yes. From that point to the police station?
Q Yes.
A Two, two and a half miles.
Q And in terms of time, how long did it take you to get there?
A Three, four minutes.
Q All right. Now, would you describe the vehicle that Mr. Sanchez was in at the time in question.
A It was a Pontiac station wagon. I believe it was a '69.
Q All right. And what, if anything, was unusual about the exterior of the car?
A Well—

THE COURT: Do you mean that you assume that there was—.

MR. STEVENSON: I said "if anything," Judge.

[87] THE COURT: Was there anything unusual about the exterior?

THE WITNESS: It was dirty, the body.

THE COURT: Do you mean dirty in the back?

THE WITNESS: All over. The car needed a wash.

THE COURT: And all cars in Villa Park are always washed?

THE WITNESS: That I couldn't say. This is about the only thing I noticed about the car.

THE COURT: I'm glad mine isn't out there today. It really needs a wash job.

BY MR. STEVENSON:

Q All right. Now, did any police officer enter into Mr. Sanchez's car?

A No.

Q At any time from the point of your initial contact with Mr. Sanchez up to the time that you arrived back at the police station?

A No.

Q When you arrived back at the police station, what happened there? First of all, about what time did you arrive back there?

A 2:45, 2:46.

[88] Q And what happened when you got there?

A All four of them were brought inside, brought to the sergeant's office.

Q Then what happened?

A We got—

THE COURT: They were brought inside? I don't understand. What happened? You see, there is a difference between they went inside, they were brought inside, they were taken inside.

THE WITNESS: Well, we motioned, "Go through that door into this office," you know, "just have a seat in the chair."

THE COURT: And they did it?

THE WITNESS: Yes.

BY MR. STEVENSON:

Q Okay. What happened at that point?

A We got the names of the two persons without identification. We got their names, dates of birth.

THE COURT: How?

THE WITNESS: Through Mr. Sanchez.

THE COURT: One at a time?

THE WITNESS: One at a time.

THE COURT: Who asked the questions?

[89] THE WITNESS: I believe it was the sergeant asked Mr. Sanchez. Mr. Sanchez just, I believe, interpreted. We gave the two gentlemen—or we gave three of them a piece of paper and a pencil, and they wrote their name, printed their name and their age.

THE COURT: Did you tell them to write it?

THE WITNESS: I don't believe—I can't recall if we told them to write it or print it. We just asked them to put their name down.

THE COURT: You mean when you say you asked them—did you do it in such a manner that it would have been silly for them not to have done it?

THE WITNESS: I don't believe so.

THE COURT: Well, what—

THE WITNESS: To run this check, we figured if we had their names printed on there we could pronounce them more clearly, and if we knew how old they were—

THE COURT: So instead of asking them you told them, isn't that right?

THE WITNESS: We asked Mr. Sanchez, if they can, to write their names.

[90] THE COURT: And he said yes, they can?

THE WITNESS: I believe he told them to write their name or "Will you write your name?" I don't know exactly how he told them, but they picked up the pencils and they started writing their names.

THE COURT: They obeyed Mr. Sanchez?

THE WITNESS: Yes.

THE COURT: And he obeyed you?

THE WITNESS: Yes.

BY MR. STEVENSON:

Q All right, tell us the next thing, please.

A Sergeant Weiser contacted the night number of immigration and I believe he talked to a Chief Partin. I can't be certain about that. I believe it was Mr. Partin who talked to each one of the three persons.

MR. BEELER: I think I am going to object to this testimony. It sounds very much like hearsay or want of personal knowledge.

THE COURT: Well, he can describe what he saw. What he is saying is Mr.—who was it?

THE WITNESS: My name?

THE COURT: No, the other officer, the sergeant.

[91] THE WITNESS: Oh, Sergeant Weiser.

THE COURT: (Continuing) —the sergeant called somebody and then that somebody on the other end of the line was apparently talking to each of the men.

THE WITNESS: Yes.

THE COURT: And they talked in a language which you didn't understand.

THE WITNESS: Yes, sir.

MR. STEVENSON: Judge, of course, this is a motion to suppress and the main stay of a motion to suppress is that hearsay is acceptable on the issue of—

THE COURT: The Government is strong enough not to have to depend upon hearsay.

MR. STEVENSON: Well, at this particular moment, Judge, I am not sure how much this particular part of it has to do with the issues before the Court, but certainly a hearsay objection in a motion to suppress is not a valid objection.

THE COURT: We haven't gotten into anything that is hearsay at this point.

[92] BY MR. STEVENSON:

Q Were you present when the sergeant spoke over the phone?

A Yes, I was.

Q And were you present when the three passengers spoke over the phone?

A Yes.

Q After the three passengers talked over the phone did any of the police officers then speak over the phone again?

A Sergeant Weiser spoke to Chief Partin, if that is who was on the other end.

Q All right. Could you hear one side of the conversation?

A The sergeant's side.

Q All right. What did you hear?

A I heard Sergeant Weiser say that the three gentlemen admitted that they were in the country illegally, and Mr. Partin asked the sergeant to hold all four of the gentlemen until immigration could come out in the morning.

Q All right. Now, from the time you arrived—

THE COURT: Just a minute now. You say you [93] heard whom say that?

THE WITNESS: The sergeant.

THE COURT: That they admitted that they were in the country illegally?

THE WITNESS: Yes, to this Mr. Partin, over the phone.

THE COURT: But had you heard them make that admission?

THE WITNESS: They were speaking in Spanish. I don't know what they were saying. This is what was translated from Mr. Partin to the Sergeant and then to myself.

THE COURT: Oh, you heard Mr. Partin talk to the sergeant?

THE WITNESS: I saw the sergeant on the phone with him and Mr. Partin told the sergeant—

THE COURT: But did you hear Mr. Partin?

THE WITNESS: No, I could not hear him.

THE COURT: Then you don't know what he said?

THE WITNESS: No.

THE COURT: But what did the sergeant say?

THE WITNESS: The sergeant said that Mr. Partin told him that the three gentlemen admitted that they [94] were in the country illegally and Immigration

would be out around 7:00 or 8:00 o'clock in the morning and to hold all four gentlemen for Immigration.

BY MR. STEVENSON:

Q All right. Now, from the time you got to the station to the phone call, approximately how much time passed?

A Four or five minutes.

Q All right.

MR. BEELER: I am sorry. I did not hear that.

THE COURT: Four or five minutes.

THE WITNESS: Four or five minutes.

BY MR. STEVENSON:

Q All right. Will you explain—strike that. How did it happen that your police station had a night phone number for the Immigration Service?

A In our area—

MR. BEELER: I object to that. I think it assumes facts not in evidence. How did they happen to have—

THE COURT: Yes, it assumes, of course, that he couldn't have looked it up in the telephone directory.

[95] MR. STEVENSON: All right. I believe that is correct, if the Court please.

BY MR. STEVENSON:

Q Have you personally had any prior experience with immigration cases?

A Yes, I have.

Q And how many occasions?

A Approximately three.

Q How long before the one we are talking about now was the last one?

A About a week before.

Q And, briefly, and summarize, what were the circumstances of your prior experience?

MR. BEELER: Your Honor, I object to this on grounds of irrelevance.

MR. STEVENSON: Judge, I would like to be heard on that point. The recent case of Harris vs. New York states that when the issue is probable cause the amount of information that an officer making an arrest has in

his mind based on his prior experience with the person or the crime in question is a relevant issue. They overruled Spinelli to that affect.

[96] THE COURT: When were they arrested?

BY MR. STEVENSON:

Q Would you answer that, please.

THE COURT: No, I—

MR. STEVENSON: Do you mean—

THE COURT: I am asking you. From his testimony.

MR. STEVENSON: When you say "they," Judge, who are you referring to?

THE COURT: The three in this case.

MR. STEVENSON: On November 17th?

THE COURT: No, at what point in this procedure?

MR. STEVENSON: I am afraid I don't understand your question.

THE COURT: Well, an arrest takes place at some one time, some moment.

MR. STEVENSON: Yes, Judge.

THE COURT: When did that moment occur as to the three men?

MR. STEVENSON: I would say that it occurs at the time of the phone call, Judge. That would be my opinion.

THE COURT: Well, how would the phone call [97] constitute an arrest of them?

MR. STEVENSON: Well, the information engendered by the person at the other end of the phone to these officers would then be the amount of information for the arrest to occur.

THE COURT: Before that phone call was made, if one of them had broken out of the door and run out of the police station, what would you have done?

THE WITNESS: Chased after them.

THE COURT: Then what would you have done?

THE WITNESS: Run him back to the station and try to determine why he ran.

THE COURT: But suppose you couldn't have caught him; what would you have done?

THE WITNESS: Nothing.

THE COURT: Do you mean just let him escape?

THE WITNESS: I would try to the best of my ability to recapture him.

THE COURT: How far would you have gone to try to recapture him?

THE WITNESS: Until I lost sight of him.

THE COURT: But suppose you catch up with him [98] but you can't just quite get up there?

THE WITNESS: Just keep going until I can't go any further.

THE COURT: Then what would you do?

THE WITNESS: As far as I know, there is not too much more I could do.

THE COURT: Would you have pulled out your gun and told him to halt?

THE WITNESS: No, I don't believe so.

THE COURT: Would you have shot in the air?

THE WITNESS: I don't think I would have.

THE COURT: Would you have shot in the ground?

THE WITNESS: I don't think I would have pulled out my gun at all, honestly.

THE COURT: You would have just gone back and said "He got away"?

THE WITNESS: That is about it.

THE COURT: Have you had that kind of experience before?

THE WITNESS: I have had it a couple of times with juveniles.

THE COURT: What did you do with them?

THE WITNESS: Well, I finally caught them.

[99] THE COURT: Do you mean you outran a kid?

THE WITNESS: It took some doing but I did it. They just said, you know, "We were just scared."

THE COURT: Yes. Did you ever find one where you had to shoot to stop him?

THE WITNESS: I have never run across the situation yet.

THE COURT: Would you?

THE WITNESS: I don't think I would.

THE COURT: Why?

THE WITNESS: I don't believe a gun should be drawn unless your life is in danger or somebody else's life is in danger.

THE COURT: Yes.

THE WITNESS: I think this is the only time a gun should be drawn. This is one of the reasons why we carry Mace with us.

THE COURT: You would have used Mace?

THE WITNESS: If he resisted in any way once I caught up to him. Just enough force, reasonable force, to bring him back.

THE COURT: But you would have tackled him?

THE WITNESS: If it was the only way I could [100] have stopped him, yes.

THE COURT: So that short of using a gun, when you don't know whether or not what he has done is a felony or a misdemeanor, you would have just gotten him, that is all?

THE WITNESS: Yes.

THE COURT: Then brought him back?

THE WITNESS: Yes, sir.

THE COURT: And inquired as to why he ran?

THE WITNESS: Yes.

THE COURT: If necessary, you would have used Mace?

THE WITNESS: If it came to that point.

THE COURT: To stop him or to protect yourself?

THE WITNESS: Protect myself if he tried to resist in any way.

THE COURT: By trying to resist, what do you mean—you would have laid hands on him?

THE WITNESS: Trying to swing at me or trying to injure myself in any way. If he tried to injure me in any way.

THE COURT: But your aim and your purpose would have been to have stopped him?

[101] THE WITNESS: To stop him.

THE COURT: And prevented his further escape?

THE WITNESS: Yes, sir.

THE COURT: Because you would have at that time considered him really your prisoner, isn't that right?

THE WITNESS: I would consider so to find out why he ran.

THE COURT: And as far as these three men were concerned, at the time you walked them into the police station you considered them as your prisoners, didn't you?

THE WITNESS: Not exactly prisoners, just—

THE COURT: Halfway prisoners?

THE WITNESS: Well—

THE COURT: One-quarter way prisoners?

THE WITNESS: I don't know. In my own mind I really wouldn't consider them prisoners at all. Just finding out what they are doing there, who they are.

THE COURT: And however without drawing blood you could have done that, you would have done it, isn't that right?

[102] THE WITNESS: That is right.

THE COURT: Because you knew of no felony that they had committed?

THE WITNESS: No, sir.

THE COURT: And you respect the old Illinois case law that says that you may not draw blood even to prevent the escape of a misdemnant, isn't that right?

THE WITNESS: Yes, sir. I am not familiar with that law. This is the first time I have heard of that law. This is what I personally would have done.

THE COURT: But if it is a felon you would use such force as is necessary?

THE WITNESS: If I knew for sure it was a felony, the only time I would have used a gun is if he turned around and had some kind of a weapon, he was going to shoot me or throw a knife at me, something like this.

THE COURT: But if you don't know whether it is a misdemeanor or a felony, or whether it is nothing at all, you still would see to it that you retain hold of him or control of him until you find out what it is?

[103] THE WITNESS: Yes, sir.

THE COURT: And, short of drawing blood, you would have done that, isn't that right?

THE WITNESS: Yes, sir, if he would have taken off.

THE COURT: I am sorry to have interrupted you.

MR. STEVENSON: Not at all, Judge. I was in the process of asking him about his prior experiences with immigration cases. May I continue in that vein for a brief moment or so, Judge?

MR. BEELER: I have an objection based on relevance. He mentioned the Harris case. There is nothing to show that the police officer here perpetrated this arrest at Addison & North based on any violation of the immigration laws. I don't see the connection that any past experience with immigration offenses would have regarding this offense.

Secondly, there are all kinds of immigration laws. Being defense counsel in this case, I have acquainted myself with them recently. There are hundreds of immigration laws defining a multitude of different offenses. So I don't think that his [104] past experience with immigration offenses in general establishes any requisite criteria—

THE COURT: But he may be of the opinion from his past experiences that any time you find four Mexican men in a car in the stealthy middleness of a dark night, 2:30 in the morning, parked off the side of a highway at a corner in—what is that park?

MR. STEVENSON: Villa Park.

THE WITNESS: Villa Park.

THE COURT: Villa Park, they have to be illegally in the United States and, thus, in violation of the laws of the United States. That may be his experience and that may have been in his mind or his partner's mind.

The state of mind has a great deal to do with the nature of an arrest when it occurs.

MR. BEELER: I still don't think three prior immigration cases would supply enough familiarity for the officer to know that that—

THE WITNESS: Personally, three.

THE COURT: Three. Well, that would be the basis of his experience and the state of his mind.

[105] MR. BEELER: Yes, but I don't think he could learn that through three cases. It would take more experience.

THE COURT: Well, his state of mind may have grown from those three cases.

MR. BEELER: Well, all right.

MR. STEVENSON: May I proceed, Judge?

THE COURT: Yes.

BY MR. STEVENSON:

Q All right. Did I understand you to say your last experience before the one in question was about a month and a half before this, is that correct?

A About a week before.

Q All right, whatever it was, briefly relate the circumstances of that experience.

A We have a farmhouse at the south end of town that is just outside of our jurisdiction in an unincorporated territory. DuPage County got a report that this farmhouse was housing illegal entries from Mexico. DuPage County requested help from us in going in and checking this building out.

Q All right. Did you do that?

A Yes, sir, we did.

[106] Q And what, if anything, did you find there?

A Quite a few people illegally in this country.

Q Did any of those persons speak English?

A Not that I recall.

Q Did any of those persons have identification of the United States in any way?

A No, sir, I do not believe so.

Q Did you have any prior experience with a Mexican military card such as one of the persons in the car in our instance showed you?

A No, sir.

Q All right. Briefly relate the next to the last experience before the one you just mentioned.

MR. BEELER: Your Honor, again I would object to this line of testimony, particularly on grounds of relevance.

MR. STEVENSON: Judge, I—

THE COURT: Do you mean it doesn't show state of mind?

MR. BEELER: It is possible that it will show state of mind but state of mind in the abstract is not relevant.

THE COURT: Well, state of mind is one of the [107] criteria for finding out when an arrest has taken place. Then the question is presented, when the arrest took place was the Miranda warning given? Then the question also is presented, did the arrest take place for a violation of a law for which the officer had legal authority to perform an arrest?

So you have to find when the arrest took place. All Counsel is trying to do is help us locate that time by showing his state of mind. Is that what you are doing?

MR. STEVENSON: That is correct, Judge. May I proceed?

THE COURT: You may proceed.

BY MR. STEVENSON:

Q Before you get to the next one, the next experience, referring you to the farmhouse that you just spoke about, did you have occasion to determine how those Mexican aliens got to where they were arrested?

A I learned that they were transported by car.

MR. BEELER: Your Honor, I would object to that answer as not relating the source, there is no indication it comes from a reliable source.

[108] THE COURT: It is a part of his experience.

MR. BEELER: That is not part of his experience if he learned it from an unreliable source.

THE COURT: Regardless of how he learned it, if he learned it later, it becomes a part of that mental process which then we can pinpoint came into play at a certain time.

MR. BEELER: All right, as long as—

THE COURT: And the question of when it came into play may rely heavily on these experiences. It may have come into play at the time he looked across the street and saw that there were three persons quite easily identifiable physically as Mexicans, and walked across the street and said, "What can we do to help you?"

At that very moment he may then have been in a state of mind of performing an arrest and at that moment an arrest took place. Or it may not have occurred until after they were in the police station.

MR. BEELER: I would withdraw the objection insofar as it relates to his general state of mind, except to my general objection to that line of [109] inquiry. But I do object to it as contributing directly—

THE COURT: As to materialty you are quite correct. But as to state of mind I think, well, I don't want to lead this examination; I will let you two gentlemen fight your own battles.

MR. BEELER: Do I understand then that he can answer only with regard to his state of mind it is not admissible as far as his showing of probable cause, that is, specific knowledge?

MR. STEVENSON: Judge, good faith or bad faith on the part of the purported arresting officer is always an element of the reasonableness with which your Honor is most concerned. I am not saying if he has good faith that that is the ball game, I don't mean to say that, but surely good faith or bad faith in the state of mind area is a requisite consideration for the Judge in any case where they are seeking to suppress the evidence.

THE COURT: I wasn't thinking in terms of good faith or bad faith, I am sure he acted out of good faith, but I was concerned with the state of mind.

[110] MR. STEVENSON: I understand that, Judge, but—

THE COURT: Because state of mind in a—

MR. STEVENSON: As to his past experiences.

THE COURT: —in an arrest case the state of mind pinpoints the moment when he himself considered himself putting the other man under arrest.

MR. STEVENSON: I understand.

THE COURT: And nowadays you just don't put a man under arrest by saying, "You are now under arrest," and if he can't speak English, I mean, you just can't say it in Spanish. You tell him to do something. You ask him if you can do something. "Let me see your identification. Get out of the car."

Or you may do none of those things if at the moment your state of mind is not such as would cause you to say that there has been a misdemeanor or some crime that has taken place. You may honestly mean it

when you come up and say "Can I be of service to you?" If the party on the inside of the car says "No. I am sorry. Thank you very much. You can't be of any service to me" you would [111] honestly walk away.

But under the circumstances if the state of mind, even at the time, looking across the road there, he sees these men who are obviously Mexican and he walks over and says, "May I be of service to you?" His state of mind may have been such as would cause those words to really mean "You are now under arrest. From here on you will do what I tell you to do. If you seek to escape, short of drawing blood to stop you, I will do everything I can to stop you. I am taking you in." That is when the arrest takes place.

When did it happen? That is the problem. That is a hard thing to figure out. It is hard for a Judge to always figure out. Policemen don't use the language "You are under arrest." If I were a policeman I wouldn't. I wouldn't say, "You are under arrest," I would say everything but that in order to protect myself so that if it came to a question I could place the actual time of arrest at the time that is most convenient for my situation. A tactful policeman won't say that. When there is a crowd around he will say it but out in the dark of [112] the night, at 2:30 in the morning, with no other automobile around and four Mexicans in a car parked off the road, when you walk across there and say, "May we be of service to you?" If your experiences have been such that in each of such instances it has been found that the persons you have stopped were here in the country illegally, you place them under arrest that very moment.

(Addressing the witness) That is when you did it. Don't you think so?

MR. STEVENSON: Are you referring now to this particular case, Judge?

THE COURT: In any such case. I was using—

MR. STEVENSON: No, I don't think so at all, Judge, most respectfully. If that is true, then any person who is pulled off the road at a late hour, where an officer

pulls up to find out what he is parked on the side of the road for—

THE COURT: He is arrested.

MR. STEVENSON: He is arrested, Judge?

THE COURT: Why not?

MR. STEVENSON: Why should he be, Judge? If you use the example that—

[113] THE COURT: But suppose he refuses to do it?

MR. STEVENSON: Refuses to do what, Judge?

THE COURT: To pull off the road?

MR. STEVENSON: Well, again, that is not what happened here so—

THE COURT: No, but suppose the one you were telling me about, if they refused to do it?

MR. STEVENSON: All right, in other words, if a car is in motion and an officer makes a gesture to pull off on the side of the road and the car doesn't do it, is that your Honor's question?

THE COURT: That is right.

MR. STEVENSON: Courts have held he could be pulled over for a traffic offense, Judge.

THE COURT: Isn't that an arrest?

MR. STEVENSON: A stop for traffic reasons is not an arrest, Judge. Courts have held that.

MR. BEELER: Your Honor, I would suggest—I don't want to jump in here, but the majority of Courts have held to the contrary.

THE COURT: Suppose there had been no traffic violation and the police officer well knew there had been no traffic violation, haven't you a right [114] to under his state of mind at the time?

MR. STEVENSON: Yes. A question to anybody who did that would be, "What did you motion them off the side of the road for?"

THE COURT: So these other experiences he has had are material to his state of mind.

MR. STEVENSON: That is one reason why I am seeking to elicit this information, Judge, but Counsel continues to object.

THE COURT: I know. Objection overruled.

BY MR. STEVENSON:

Q Now, the second of your prior experiences, would you briefly relate that one, please.

A It was basically the same thing with DuPage County only it happened over in Addison. They had a report that this building housed quite a few Mexican people who had entered into the country illegally, that they were brought in either by bus or truck.

Q All right.

A So we were asked to assist.

THE COURT: Asked by whom?

THE WITNESS: The Addison Police Department, to assist them.

[115] THE COURT: I see.

BY MR. STEVENSON:

Q All right. Did any of these persons in the second instance speak English?

A If they did I didn't know it. They were speaking mostly Spanish.

Q Did any of them have United States identification cards of some sort?

A No.

Q All right.

A At least not that I recall.

Q And, finally, would you briefly summarize the last of your prior experiences.

THE COURT: You mean the first.

MR. STEVENSON: All right, I should say the first

THE COURT: Yes.

BY THE WITNESS:

A The first one goes back about four or five years ago when I was part-time police officer in another town. It was the same thing only it was in that particular town. The detective got information that there were some illegal aliens in there and a bunch of us [116] were detailed to go over there and make sure nobody got away.

THE COURT: In each of those instances did you hold these people until the Immigration people came?

THE WITNESS: Yes, we did.

THE COURT: And no other Federal officers came before the Immigration people came?

THE WITNESS: If they did I am not aware of it.

THE COURT: I see.

MR. STEVENSON: I have just a couple of more questions.

THE COURT: All right.

BY MR. STEVENSON:

Q What reason, if you know, do Mexican aliens go to Villa Park and surrounding communities?

MR. BEELER: Objection, your Honor. I think that that—

MR. STEVENSON: It is part of his experience, Judge, as to why they are there.

THE COURT: Who is representing whom?

MR. BEELER: I think I am representing the [117] defendant and I think this is properly objectionable. I don't know what the answer is that Mr. Stevenson is trying to elicit but he is asking the police officer to testify about other persons' motives. There has been no foundation that he knows what other persons' motives are. I think it is objectionable. It calls for an opinion. It calls for something over which he has no personal knowledge.

MR. STEVENSON: May I rephrase the question then, Judge?

BY MR. STEVENSON:

Q Did any of the persons to whom you have just alluded, arrested for immigration purposes, ever indicate why they went to Villa Park or a surrounding area to you?

MR. BEELER: I would object to that.

THE COURT: Do you mean arrested by whom?

MR. BEELER: There is no foundation. It covers a myriad of persons. It doesn't involve how he would learn this.

THE COURT: Well, if he could pin it down to whether or not he arrested him.

MR. STEVENSON: Well, if he answers yes, Judge, then I will lay the foundation before I ask what was [118] told to him, but I have to find out if there is anything in existence before I can lay my foundation.

MR. BEELER: I think the prosecutor has indicated that he is fishing and I think he should make his foundation first. This is his witness. He can't ask questions like that and decide whether there is going to be a foundation, having gotten inadmissible evidence in in the process. Either he knows or he doesn't. If he doesn't, he should withdraw the question.

THE COURT: It is part of the state of mind issue?

MR. STEVENSON: Yes, sir.

THE COURT: He may answer.

MR. BEELER: Well, my objection is not to the state of mind; I just said he doesn't have proper foundation. I think you have agreed with that.

THE COURT: It is a general question relating to these four experiences or three experiences, prior experiences. (Addressing the witness:) What did you find? He may answer.

BY MR. STEVENSON:

Q Do you recall the question?

[119] A Why did they come to the Villa Park area?

Q No; did any of them ever tell you or indicate in some way to you why they came to Villa Park?

A Because there are small factories there and most of the factories are looking for cheap labor.

MR. STEVENSON: That will be all I have, Judge. Thank you, your Honor.

THE COURT: Do you want to let me dispose of this other matter before you cross-examine? It won't take but a few minutes. You needn't leave. You can stay right where you are.

MR. BEELER: Thank you.

(And thereupon the Court directed its attention to another matter on its call, after which the following further proceedings were had herein:)

THE CLERK: 72 CR 50, United States of America vs. Pascual Guana-Sanchez; further proceedings.

CROSS EXAMINATION

BY MR. BEELER:

Q Officer Tenuto, do you know if there is a police report filed with the Villa Park Police Station in connection with the investigation you conducted at North and Addison Streets on November 17, 1971?

[120] A Yes, sir, there was.

Q And had you seen that police report?

A Yes, I have.

Q Do you have a copy of it with you?

A Yes, I do.

Q May I see it, please.

A That is the whole thing right there.

MR. BEELER: This is five pages, your Honor. Perhaps we should have a recess or I can read it while the Court waits, whatever you wish.

MR. STEVENSON: Your Honor, for the record—

THE COURT: I usually read five pages in about a minute.

MR. BEELER: I wish I could.

MR. STEVENSON: Judge, for the record, it is my understanding that at least two or three pages have been tendered to Counsel some time much earlier than right now.

THE COURT: Yes. What about your 2.04 conference?

MR. BEELER: Mr. Mars voluntarily gave me two pages, although your Honor didn't require it, and he said that he would have given me the full report [121] had he had it available. He also told me that at such time as the full report became available he would give it to me in advance of trial. However, the case was assigned to Mr. Michael Stevenson, who is presently prosecuting the case.

I told him of Mr. Mars' agreement. I told him that it was not ordered by the Court, that it was done as a courtesy by Mr. Mars, and Mr. Stevenson indicated that he was not of a like mind and that he wouldn't produce the remaining pages of the police report and that I would have to wait until the police officers testified on

direct examination at the hearing before I could have the police report.

Is that correct, Mr. Stevenson?

MR. STEVENSON: That is correct. There is one other thing I said, Judge. Pardon me. One other thing I said was that my decision was based on all of the Court authorities that I was acquainted with.

THE COURT: Over and above those, we have throughout the Courts of the United States over the last several years tried to cut this thing short of the rules and decisions. Trying to get that one, [122] we have had to depend upon the prosecution, unless they have something that they want to hide which they have a right to hide. Just show them everything you have and get it over with as early as you can.

This is the whole philosophy of the 2.04 conference. The purpose of it is to try—we even recommend that you show the reports that are available only under Section 3500 after the witness has testified on direct at the 2.04 conference. We can't make you. If he comes in on a motion for them, why, I deny the motion.

But unless there is a good reason to withhold the information, we think that full discovery speeds the disposition of the case. In fact, we have found in one jurisdiction, in the Southern District of California, that it increased the pleas of guilty from somewhere around 60 percent all the way up to 80 percent, and we have fewer cases to have to try. This is our purpose.

But, be that as it may, he has them now; the question is, do we have time to have a recess or why don't you just sit down there for a couple of minutes and look at them real fast?

[123] MR. BEELER: Thank you, your Honor.

THE COURT: Unless you want a recess. A short recess would help me find my correspondence so that my secretary can go on home at 5:00 o'clock. We can come back in five minutes.

MR. BEELER: I am all in favor of giving every consideration to secretaries so I am agreeable with that suggestion.

MR. STEVENSON: Judge, I would only remind the Court that this officer worked all night. He has been here all day. He has to work tonight starting at 11:00 P.M. So I would appreciate the Court's consideration of his and his partner's schedule, to the extent your Honor is able to consider it.

THE COURT: All right. We won't be but a few minutes.

MR. BEELER: Thank you, your Honor.

(Recess)

THE COURT: You may proceed.

BY MR. BEELER:

Q Officer Tenuto, you realize you are still under oath now?

A Yes, sir, I do.

[124] Q Were any other police reports made that you know of in connection with this case which you have not given to me?

A This particular case?

Q In connection with this particular case.

A No. That is the report.

Q So there are no other reports involving the defendants or—

A On this charge, no.

Q Are there any other reports regarding the three passengers of his motor vehicle?

A Everything is included right there.

Q Thank you, Officer. Now, have you talked with anyone about this case prior to your testimony here today?

A Yes, I have.

Q With whom did you talk?

A Mr. Stevenson.

Q When was that?

A Last Tuesday or Wednesday.

Q I see. Where were you when you were speaking with him?

A In his office.

Q And that was in the Federal Building?

[125] A Yes.

Q And who was present on that occasion?

A Myself, Mr. Stevenson, Officer Hall and two agents from Immigration.

Q I see. Was anyone taking any notes or making any record of the conversation at that meeting, if you know?

A No, not that I know of.

Q Did anyone have a note pad out.

THE COURT: Is that important?

MR. BEELER: It might be.

THE COURT: Are you fishing?

MR. BEELER: I think I am fishing. I certainly wouldn't know if the Government had notes because of course, I don't go fishing through their files. The only way I have of learning this—

THE COURT: What is it you want to know?

MR. BEELER: I want to know if Mr. Stevenson or the Immigration officers have any notes of their conversations.

THE COURT: Which indicate what?

MR. BEELER: Relating to the subject matter of his direct examination.

[126] THE COURT: You expect such notes would show what?

MR. BEELER: I don't know what they would show. I hope they would show a complete lack of probable cause.

MR. STEVENSON: Judge, I will state for the record that I have two pages of yellow legal pad where I wrote the questions out I intended to ask along with a lot of other notes, and I will be happy to tender them to the Court. I don't think—

THE COURT: No, I don't think they are material to the issue.

MR. BEELER: Well, I think the Court should at least examine them, although I think defense counsel--

THE COURT: For what purpose?

MR. BEELER: To see whether—

THE COURT: The issue is, when was he arrested and by whom? And did they have authority to arrest him.

MR. BEELER: Well, there are other issues involved in cross-examination. There is credibility. There is abil-

ity to remember and discern. There is a possibility of a prior contrary statement. I [127] think these are all legitimately within the scope of cross-examination. It is one of the few tools defense Counsel has, the occasion to observe his previous statements or records.

THE COURT: What does that record show Mr. Sanchez was arrested for?

MR. BEELER: The police report?

THE COURT: Yes, sir.

MR. BEELER: My own interpretation is it doesn't show he was arrested for anything; that he was arrested because he was in the wrong place at the wrong time.

MR. STEVENSON: I will object to that characterization, Judge, for the record.

THE COURT: It shows something else?

MR. STEVENSON: The police report does indicate something other than what Counsel has said, yes.

THE COURT: What does it say he was arrested for?

MR. BEELER: I will object to Mr. Stevenson testifying.

THE COURT: You are objecting to my questioning Counsel?

[128] MR. BEELER: Well, I am objecting to Mr. Stevenson putting evidentiary matter before your Honor.

THE COURT: Well, you won't tell me so I have to ask him.

MR. BEELER: No, I think I did tell you. I think that the police report shows what I say it shows. Mr. Stevenson has his answer, because he doesn't understand what an arrest is, your Honor. He thinks a man is not arrested until he is manacled, and that a person can be dragged off to a police station, held there past 2:30 A.M. in the morning, required to answer questions, to talk with Immigration officers on the telephone, all of these things, and he is not under arrest, that the man is only under arrest when they decide to slam the cell shut, that is when he is under arrest, and at that time perhaps they had charges to place against him, but that is not the way an arrest is defined.

THE COURT: Does the report show what the arrest was for or does it show that he wasn't arrested?

MR. BEELER: I think it shows that he was arrested and he wasn't charged until considerably [129] later.

THE COURT: Charged with what?

MR. BEELER: Eventually he was charged with the charges here.

THE COURT: But the police didn't charge him with anything.

MR. BEELER: I think he was eventually charged, you know—this is not evidentiary matter, but he was eventually charged with possession of a firearm because his glove compartment was searched after he was taken through the police station and interrogated there. He had been given a firearm as a Christmas present by an uncle in Texas and he had carried it to Illinois and, having arrived here, it was not registered.

THE COURT: When with relation to his being taken into the police station—was he ever locked up?

MR. BEELER: Yes.

THE COURT: When with relation to when he was locked up was he charged with possession of a firearm?

MR. BEELER: I am not sure.

THE COURT: (Addressing the witness) When? [130] THE WITNESS: He was placed in a detention cell after the Immigration authorities told us to detain Mr. Sanchez until they came out in the morning.

THE COURT: Oh, that is when he was arrested? It was after they came out that you found the gun in the glove compartment?

THE WITNESS: It was just before this. While this was going on, you know, the gun was found in the glove compartment.

THE COURT: And when was he booked for that?

THE WITNESS: As soon as the gun was found.

THE COURT: But he was already behind bars then?

THE WITNESS: No, sir. He was sitting in the sergeant's office. He was placed in the detention cell after the gun was found after he was charged with possession of the gun and after the DuPage County forms were processed.

THE COURT: But before then he wasn't arrested?
THE WITNESS: No, sir.
THE COURT: Was he free to go?
THE WITNESS: Yes, sir.
THE COURT: Did you tell him he was free to go?
THE WITNESS: I don't believe he was told [131] because we never really told him to come to the station; we asked him if he would come.
THE COURT: But having asked him if he would come and his coming anyway, if hadn't have come why, you would have taken him in anyway, isn't that right?
THE WITNESS: No, sir. We really didn't have anything to bring him into the station for.
THE COURT: Do you mean he made the mistake of just obeying your—of just yielding to your request?
THE WITNESS: Yes, sir.
THE COURT: You may go ahead.
MR. BEELER: Mr. Stevenson has offered to tender his notes for an in camera examination. I take it that has been denied?
THE COURT: No, I will look at them.
MR. STEVENSON: All right, Judge, may the record show I am handing to the Court two pages of yellow legal pad with various notes in every corner and in various colors. (Proffering documents)
THE COURT: Go right ahead. I can hear and read this, too. It will save time.

[132] BY MR. BEELER:

Q Before you testified today did you consult or refer to any writing which may have refreshed your memory?
A Just the reports.
Q Did you refer to the handwritten notes on the yellow paper?
A No. Everything was done strictly from the reports that Officer Hall and myself typed up.
Q And when did you refer to those?
A About two days ago.
Q Thank you. Have you read any of the legal papers filed with the Court in this case?
A No, I haven't.
Q Have you read the indictment?

A No, sir.

Q Do you know who testified before the Grand Jury which indicted the defendant?

A No, sir.

Q Did you testify before the Grand Jury?

A No, sir.

Q Do you know if any of your fellow police officers testified before the Grand Jury?

A No, sir, I do not.

[133] Q Do you know that they didn't testify before the Grand Jury?

A I don't know if they did or they didn't.

Q If they had done so, was it a part of the usual and ordinary course of business of the Villa Park Police Station—would a report have been made of the fact that they testified before a Federal Grand Jury?

A It would have been added onto that report right there.

Q So that it would have been a part of the file here?

A Yes.

Q So, based on that practice, then, you know that no Villa Park Police Officer did testify?

A Yes, sir.

Q Were you subpoenaed to testify here today?

A I was asked to come down.

Q But you weren't subpoenaed?

A No, sir.

Q Officer Tenuto, would you tell me how many Mexican Americans there are on the Villa Park Police Force?

MR. STEVENSON: I will object to that, Judge, as having no relevance to anything here.

[134] THE COURT: Well, of course, traditionally I let it in.

MR. STEVENSON: All right.

THE COURT: I see nothing here.

MR. BEELER: All right, I would ask it be made a part of the record.

THE COURT: Well, you can give us a copy later on.

MR. STEVENSON: All right, your Honor.

THE COURT: We can impound it.

MR. BEELER: Thank you, your Honor.

BY MR. BEELER:

Q How many Mexican Americans are there on the Villa Park Police Force?
A That I know of, none.
Q How many were there that you knew of on November 17, 1971?
A None that I knew of.
Q How many Negro Police Officers are there on the Villa Park Police Force?
A None.
Q Was that also true on November 17, 1971?
A Yes, sir.
[135] Q Based on your experience as a police officer and with immigration cases, are you able to recognize the difference between individuals of Puerto Rican ancestry and those of Mexican ancestry?
A No, I am not.
Q Are Puerto Ricans American citizens?
THE COURT: If you know.
MR. BEELER: If he knows.

BY THE WITNESS:

A I really couldn't say for sure. I don't know.
THE COURT: Well, I will inform you. By birth they are. Even born in Puerto Rico, they are American citizens.

BY MR. BEELER:

Q When was the last time you were in the vicinity of North and Addison Roads in Villa Park, Illinois?
A 6:30 this morning.
Q Does the area of that intersection appear substantially similar to how it did on November 17, 1971?
A Yes, sir, it does.
Q The basic topographical features are the same?
A Yes.
Q What time does the night shift start?
[136] A 11:00 P.M.
Q Is that the time it started on November 17th?
A Yes, it did, except for one man on each shift starts one-half hour earlier.

Q So there is one man starting the night shift at 10:30?
A Yes. He is considered the early man.
Q But he is part of the night shift?
A Yes, he is considered part of the night shift.
Q Thank you. You were in uniform that evening, November 17th?
A Yes, sir, I was.
Q Do you have a badge?
A Yes, sir.
Q Were you carrying any weapons?
A Yes, I was.
Q What weapons were those?
A A .38 Smith & Wesson four-inch barrel.
Q Was that visible?
A Yes, it was.
Q And were you carrying Mace?
A Yes, sir.
Q Was that visible?
[137] A Yes, sir.
Q What kind of Mace can was it that you had?
A It is—
THE COURT: It is not always in a can, is it?
MR. BEELER: I don't know. I try to avoid Mace to the best of my ability. I am assuming a fact not in evidence.

BY MR. BEELER:

Q What kind of container do you carry your Mace in?
A It is a leather holster. It is strapped to my belt.
Q And inside that there is Mace?
A Yes.
Q Do you carry a club?
A We take one with us in the car but it usually remains in the car. The only time we usually take it in is in family fights and things of that nature.
Q Do you carry handcuffs?
A Yes, we do.
Q Where do you carry those?
A In a pouch also attached to my belt.

[138] Q And do you have any other pouches attached to your belt?

A One other one—extra ammunition.

Q And would a person viewing you, dressed in your ordinary police gear, be able to tell that you were carrying weapons on your belt?

A Yes.

Q Would they be able to tell the general nature of the weapons or the paraphernalia—

A Yes.

Q Were the other police officers on patrol that evening similarly attired?

A Yes, sir, they were.

Q Now, when you observed the car at North and Addison you said that you made a license plate check, is that correct?

A We radioed in the license plates.

Q Can you recall the license number?

A CV 4433, I think it is, or something.

Q Is that an Illinois license plate?

A Yes, '71, I believe, Illinois.

Q All right, and that wasn't a downstate license plate, was it?

[139] MR. STEVENSON: Objection, Judge. There is no way to tell a downstate license plate.

MR. BEELER: That is for the officer to answer.

THE COURT: If he knows.

BY THE WITNESS:

A Well, at the time we had no idea if it was downstate or local or what.

BY MR. BEELER:

Q Did you get a radio report back on that license plate?

A When we got into the station there was a check—or, no, I believe we got the report before we went into the station. I could tell for sure if I could look at the radio log.

Q That is a fair request.

MR. BEELER: Would the record show I am handing the witness what has been admitted into evidence as Government's Exhibit 1?

THE COURT: It may so show.

BY THE WITNESS:

A We radioed in the plate and we got an answer back approximately three to five minutes later, who the plate belonged to and if the car was stolen or not.

[140] BY MR. BEELER:

Q All right, and according to the information you received from your dispatcher, who did the car belong to?

A The driver, Mr. Sanchez.

Q And what was the address?

A I would have to refer. 9727 South Avenue L in Chicago.

Q And that wasn't a different address from the one on his driver's license, was it?

A As I remember it was the same.

Q And the report indicated that the car was not stolen, is that correct?

A Yes, sir.

Q That also indicated the car wasn't wanted in connection with any crime?

A Yes, sir.

Q By the way, was there a Marathon gasoline station open across Addison Road at that time?

A There is a Marathon gas station across the street but they close about 11:00 o'clock or midnight. They were closed at that time.

Q Now, when you approached the defendant's motor [141] vehicle, at any time prior to asking the passengers for identification were the occupants of the car ordered out of the vehicle?

A Before—

Q Before the passengers were asked for identification?

A No.

Q Were they ordered out for questioning before that time?

A No, sir.

THE COURT: When were they ordered out, if at all?

THE WITNESS: After we found out that they did not have any identification and the sergeant came up there, when he said, "Let's bring them into the station and check them out and see who they are, if they are wanted by anybody."

THE COURT: So you had them follow you?

THE WITNESS: Yes, sir.

BY MR. BEELER:

Q Now, when Officer Hall asked the defendant whether he had an I.D., what would you and Officer Hall have done as part of your usual police practice if he [142] had refused to show you one?

MR. STEVENSON: I object. It calls for speculation. It is no part of this case.

MR. BEELER: He says it is part of his usual police practice—

THE COURT: Well, reword it: Does your manual or your usual police practices provide what you should do in case a person refuses to take out his i.d.?

THE WITNESS: Chapter 95 and ½ of the Illinois Vehicle Code states that a driver of a vehicle must show his driver's license on demand to a police officer. So, usually, in this case, if somebody refuses to show a driver's license we can hold them there or bring them into the police station until we find out if this person has a valid driver's license from some state.

THE COURT: You don't search them?

THE WITNESS: If it comes to a point where we have to take them into the station, yes, we do.

THE COURT: I see. Do you search the car?

THE WITNESS: Yes, sir, usually.

[143] BY MR. BEELER:

Q When you search the car, do you search the glove compartment?

A Yes. We usually search the entire vehicle.
Q Do you search the trunk?
A Yes.
Q Under the seat?
A Yes.
Q Under the hood?
A I have rarely gone that far.

THE COURT: If you don't need to go under the hood, Counsel, it wastes time. I mean, sort of beam—in on your real issue. (Addressing the witness) When did you search the car and find the gun?

THE WITNESS: After the vehicle was brought to the police station.

THE COURT: And that was before you talked with Mr. Harding—is that his name, the officer, the customs officer?

MR. STEVENSON: Partin.

THE WITNESS: This was before they called Immigration.

THE COURT: And it was after these people were [144] taken inside the station?

THE WITNESS: Yes, sir.

MR. STEVENSON: Judge, that weapon is not evidence in this case in any way.

THE COURT: No, the weapon is not evidence.

MR. STEVENSON: So the manner of—

THE COURT: The timing of the search bears upon the arrest and weather or not they were under arrest. It was a search incident to an arrest, isn't that true?

MR. STEVENSON: Well, Judge, I don't think that issue is before the Court since the only reason for ruling on the question is as to whether to exclude evidence or not, and since there is no evidence in the form of a weapon, I don't think the Court needs to consider that problem.

THE COURT: No, no, I wasn't considering the problem of the weapon except in relation to the timing of the arrest.

MR. STEVENSON: All right, Judge.

THE COURT: In other words, was he arrested before or after there was a telephone conversation, then the search of the car as an incident of the [145] arrest would indicate that he was really under arrest at the time the car was searched and, under arrest, the question is "for what?"

As this young man says—I forget his name—was he under arrest for just being the wrong person at the wrong place at the wrong time, or was he under arrest just to find out whether or not to arrest him?

In other words, was it what is provided for under the Code of the District of Columbia, and that is reasonable detention under the theory of suspicion, which is short of probable cause, which is the basis of arrest under Illinois law?

Then the next simple question is, when a final arrest was made of him, was the arrest made on behalf of Immigration or was it made because of the gun? Which comes first? It is a matter of timing, you know, what happened in the police station. The faster you cut that short, the quicker we can get this police officer home.

MR. BEELER: Fine.

BY MR. BEELER:

Q Did you ever advise the defendant of his [146] constitutional right, you, personally?

A Not that I recall.

Q Isn't it true that the first person to advise him of his constitutional rights were the Immigration Officers who appeared at the police station?

THE COURT: The next morning?

MR. BEELER: The next morning.

BY THE WITNESS:

A I have no idea. Officer Hall and myself got off duty at 7:00 o'clock, and, from what I understand, the Immigration authorities came at 8:00.

BY MR. BEELER:

Q I see. So prior to 7:00 o'clock no one warned the defendant of his constitutional rights?

A Not that I know of.

Q Fine. That is also true of the three passengers of his car, isn't it?

A As far as I know.

Q Okay. Showing you once again Government's Exhibit 1 and, once again, the second page of it, there is a notation in a column called "Car Number," it indicates on the first line "130," the second line, "130"—the third line, can you read that?

[147] A Well, 130 is the car number that Officer Hall and myself were in—

Q That is your car?

A That is our car. We radioed in, gave the desk operator the license plate number and asked her to run a check on the license plate number. It is the usual practice when we ask for what is called a 10-28, you know, license plate check, the whole thing is written on the next line, which would be the license number, Mr. Sanchez' name, his address, the city he lives in and the type of car.

Q I see. So that was on the third line?

A Yes. It is always entered on the radio log whenever we ask for a license plate check.

Q Then on the fourth line it indicates the car location of North and Addison for another vehicle, is that correct?

A 132.

Q Is that when the second car appeared on the scene?

A Yes.

Q And that was 2:37 P.M.?

A Yes.

[148] Q And on the next line down, the same location, North and Addison, and on the following line also, North and Addison, it indicates both cars, "10-59, two subjects." That means escorted to police station?

A Yes.

Q On the line below, that is the first, second, third, fourth, fifth—

A This one right here?

Q —sixth, seventh line down, once again at North and Addison, that is your car; the reference is "10-59 complete."

A This means we were at the station.

Q I see. That means that you arrived?

A Yes.

Q Thank you. It was after you were at the police station that the defendant's automobile was searched?

A Yes.

Q And did he execute any release or authorization or consent to have his car searched?

A No, sir, not that I know of.

Q How long after he got there did you search the car?

[149] A About a minute or two. Just enough to—

THE COURT: But he had gone on in?

THE WITNESS: Yes, sir.

THE COURT: Then you searched the car?

THE WITNESS: Yes.

BY MR. BEELER:

Q Back at North and Addison, after you and Officer Hall had gone over to the defendant's car and after Officer Hall had asked the defendant for an I.D. and after the defendant had produced his driver's license, and after Officer Hall had returned the driver's license, what would you and Officer Hall have done if the defendant then drove off immediately in his car without asking your permission?

MR. STEVENSON: Objection.

THE COURT: Do your regulations or procedures prescribe what you would have done? Sustained.

Objection sustained.

MR. BEELER: All right.

THE COURT: Or practices.

BY MR. BEELER:

Q Then after—

THE COURT: Just take my question. It is [150] faster.

MR. BEELER: Okay.

BY MR. BEELER:

Q After the defendant had his driver's license returned to him, according to either your training as a police officer of Villa Park or according to your usual practice and custom, what would you as a reasonable police officer do if the defendant then immediately drove off without asking your permission?

MR. STEVENSON: Objection again for the record.

THE COURT: You got it mixed up with, you know, a personal injury case. You are not asking him to testify as an expert, you are asking him what the custom or regulation or manual—

MR. BEELER: Or his own practice.

THE COURT: Or his own practice.

MR. BEELER: As a working police officer in the field.

MR. STEVENSON: Judge, that question assumes that the officer has had a prior experience which is the basis for his answer or asks for a blatant speculation, Judge, none of which is relevant here because it didn't happen.

[151] MR. BEELER: This is cross-examination, your Honor.

MR. STEVENSON: Oh, it doesn't make any difference, Judge. He has got to stay within the bounds of the issues we have, otherwise we will be here forever, if he goes off on everything that didn't happen. The possibilities are a million.

THE COURT: If I send Mr. Sanchez up I may send him up forever, so we might as well take our time with it. I mean, I can't be impatient. At the same time, I sort of wish the defense attorney would hurry up so I could get the police officer home.

What are your practices or procedures in that case?

THE WITNESS: We would get back in the squad and take off after him and pull him off again.

THE COURT: And you have done this on prior occasions, haven't you?

THE WITNESS: Myself, no, I have never ran into that type of situation, but there have been other officers

in the department who have run into that type of situation.

[152] BY MR. BEELER:

Q Okay. I think I have only about one other question. Would you mind standing up from the witness stand—

THE COURT: Would you care to ask the Court for permission to have the witness stand down?

MR. BEELER: Your Honor, may I have the witness approach the easel?

THE COURT: He may stand down.

MR. BEELER: Thank you.

BY MR. BEELER:

Q Are you familiar with the intersection of Addison Road with North Avenue in Villa Park?

A Yes, I am.

Q And the topographical features around it?

A Yes, I am.

Q Okay. I show you Defendant's Exhibit A for identification and ask you whether or not this is a true and accurate picture or representation of the northeast corner of the intersection?

A Yes, it is.

Q And is it a true and correct portrayal of the intersection at the time of the arrest of Mr. Sanchez last [153] November?

A Yes, it is.

Q That is, there has been no appreciable change of conditions?

A About the only difference I can see—I really can't be sure—is that this bench may have been removed. I don't recall seeing it lately.

Q All right. Now, would you mark—

MR. STEVENSON: Judge, I am going to object to any questions about this exhibit on the ground that it is clearly daytime and the testimony is that all of what we are talking about happened at 2:30 at night, therefore, it is not an appropriate exhibit in this case.

THE COURT: You didn't mean to use that exhibit to slip in the words "at the time he was arrested," did you?

MR. BEELER: No, that wasn't the purpose, although that was the answer.

THE COURT: It is a leading question on cross-examination. You have a right to ask leading questions but that can slip a witness up. You have got his testimony now that he arrested him there.

[154] BY MR. BEELER:

Q All right. Officer Tenuto—

THE COURT: And yet the position of the prosecution in this case is that he was never arrested.

MR. BEELER: Your Honor, I would like to offer this exhibit, Defendant's Exhibit A, into evidence.

THE COURT: To show what?

MR. BEELER: To portray the intersection at the time of November 17, 1971. Admitting that this is a daytime photograph, the topographical features have not changed. I would have the witness mark with an "S" the location of Mr. Sanchez' motor vehicle at the time he was arrested, just so the Court can see.

THE COURT: You are still using that "at the time he was arrested."

MR. BEELER: All right, "at the time of the occurrence." I am sorry. I have a mental set, I am afraid.

THE COURT: What part of the occurrence?

MR. BEELER: Well—

THE COURT: Are you trying to establish that he was arrested?

[155] MR. BEELER: No; I simply want to locate his vehicle.

THE COURT: Why do you want that?

MR. BEELER: Well, I think it helps clarify the setting, that is all.

THE COURT: I have no lack of clarity about it as he described it, as the officer described it.

MR. BEELER: Well, I think it is still admissible. Your Honor may not care to give it very much weight but I think it has been properly authenticated.

THE COURT: Well, what does it show?

MR. BEELER: It shows the scene which he described.
THE COURT: What does showing the scene do?
MR. BEELER: In case your Honor or a reviewing Court would want to draw any inferences as to probable cause from the scene, they would be in a better position to evaluate what inferences would be proper and what wouldn't.
THE COURT: Probable cause for what?
MR. BEELER: Probable cause for whatever occurred there.
THE COURT: Go ahead.
[156] MR. BEELER: Is it admitted into evidence?
THE COURT: Yes:
MR. STEVENSON: Over our objection, I hope, Judge?
THE COURT: Yes.

(And thereupon Defendant's Exhibit A was received in evidence.)

BY MR. BEELER:

Q Would you mark with my pen a letter "S" where Mr. Sanchez' motor vehicle was sitting when you first spotted it and when you approached it.
A It is a little difficult to pinpoint exactly. Facing North Avenue I couldn't do it exactly. It was on Addison Road. It was approximately, because of this bench here, approximately right along here, in this area right here. (Marking exhibit)
Q Okay. It was in front of the bench?
A Being night, I couldn't even recall if the bench was there or not. I don't recall seeing a bench at the time. It would be behind the bench closer to Addison Road, which is this street right here. (Indicating)
Q I see. All right. Which road is Addison Road?
A It is this road right here.
[157] MR. BEELER: Okay. Thank you. No more questions.
THE COURT: Is there any redirect examination?
MR. STEVENSON: No redirect, your Honor.
THE COURT: Very well. Do you mind if the other officer comes back Monday?

MR. STEVENSON: No, Judge. He would be more for that than anybody.

THE COURT: Yes, because, I mean, he won't have time to have dinner before—

MR. STEVENSON: That is right, Judge. May I inquire of Counsel whether he desires to put the other officer on, since his testimony is going to be substantially the same as the first officer? Perhaps your Honor feels that you have enough information—

THE COURT: I feel that I have enough information for a legal question, and then you can brief it if you want to.

MR. BEELER: I feel the same, your Honor. If the Government, you know, doesn't want to put on the second police officer—

THE COURT: No, they—

[158] MR. STEVENSON: That is not what I said, Judge.

THE COURT: They want to put him on but they say his testimony will corroborate the testimony of this officer.

MR. BEELER: I would use the term "will be similar."

MR. STEVENSON: Would you stipulate it would be substantially similar to what this officer stated?

MR. BEELER: I am not sure it is a matter of stipulation.

THE COURT: For your legal theory of the case, do you have enough?

MR. BEELER: I have enough for my legal theory. I think Mr. Stevenson has enough for his. So we are clearly at issue. I don't feel any more need for evidence. I gather Mr. Stevenson doesn't. So I assume both sides rest.

MR. STEVENSON: All right, we will rest, Judge.

THE COURT: All right. Do you want to brief it?

MR. BEELER: We will rest, your Honor. I would request in that case that I be provided a copy of the transcript pursuant to the Criminal Justice [159] act. It is rather difficult briefing what are essentially factual questions without a transcript.

THE COURT: Do you get paid for that, Mr. Betz?

THE COURT REPORTER: I am not sure, your Honor.

MR. BEELER: I can give your Honor the authority, if you would like it.

THE COURT: Do you have to have the transcript in order to answer just a few questions, to define the law on a few questions? Number one, was Mr. Sanchez ever arrested by the Villa Park Police?

Number two, if he was arrested by the Villa Park Police, for what was he arrested by them?

Number three, when and exactly where did the arrest take place?

Number four, if the arrest took place prior to the finding of the gun, was the search of the car an incident of the arrest?

Five, if the arrest did take place prior thereto, for what was he arrested?

Next, if he was arrested for "investigation," [160] is there lawfully under Illinois law such an arrest?

Next, are local police officers authorized upon request of Federal agents to act as agents of the United States in performing arrests?

Next, does Illinois law provide that local police officers may arrest for violations of what are exclusively Federal crimes and are not state crimes or local ordinance violations?

Finally, does the Federal statute contemplate that local law authorize such procedure in the absence of State law accepting the authorization?

Those are your problems.

MR. STEVENSON: Well, Judge, I believe, and respectfully submit, there is one additional one that your Honor did not exactly cover, and that is this:

Should your Honor find that arrest of the defendant occurred at the point he was first encountered by the police, whether your Honor should suppress the testimony of the three passengers on the theory of fruits of the poisonous tree holding that there was an illegal search and seizure.

THE COURT: Yes. Put it this way, and that is, [161] if it is found that that happened, rather than the fruit of the poisonous tree, does the information acquired from the passengers constitute property of the defendant in his possession?

MR. BEELER: Your Honor, I would say the issue should be framed this way: Does the defendant have standing to object to the actions of the police officers which affected the passengers of his car? It is a standing question. I think that is the only proper characterization.

THE COURT: Yes, you can use the fruits of the poisonous tree doctrine, too, if you want to put that in. How long do you want to brief this? You can brief it simultaneously and then exchange briefs and answer each other.

MR. STEVENSON: Since the defendant here clearly has the burden of proof on the motion to suppress, any motion to suppress, I would ask that I be allowed to answer whatever he writes and then—

THE COURT: How long do you want?

MR. BEELER: Your Honor, I am prepared to argue these questions right now.

THE COURT: No, no. I mean to answer them in writing.

[162] MR. BEELER: Well, if we are going to expedite things I think we could argue it now. The facts are fresh. We have done our legal research.

THE COURT: It is 5:30.

MR. BEELER: All right. I would suggest that simultaneous briefs is perfectly acceptable. Whoever the moving party is doesn't have any direct bearing on the order in which briefs should be filed.

MR. STEVENSON: That isn't true, Judge, because in a trial the Government has the burden of proof, therefore, we start and we finish. Here in this proceeding the defendant has the burden of proof so I believe he should start and he can write a reply brief after we answer—

THE COURT: Today is the 12th. Can you get yours in by the 19th? That is one week.

MR. BEELER: I think that I probably—

THE COURT: And you get yours in by the 26th?
MR. STEVENSON: All right.
MR. BEELER: Could I have until the following Monday? I find that I get a lot of my writing done over weekends when I am not bothered by telephone calls.
THE COURT: I am giving you a weekend, this weekend.
MR. BEELER: This weekend is already committed. I am putting out a newsletter, I am writing a reply brief—
[163] THE COURT: All right. That will give the Government until the following Tuesday, which is the 30th.
MR. STEVENSON: Judge, would you start over as to when the brief of the defendant is due because I didn't get that part of it.
THE COURT: The 22nd.
MR. STEVENSON: The 22nd, and then he is to serve us with notice of his brief and we are to write the answer, is that correct?
THE COURT: Yes.
MR. STEVENSON: All right, we have until—
THE COURT: Until the 30th.
MR. STEVENSON: Until the 30th.
THE COURT: Then come in the afternoon of the 31st at 2:30.
MR. STEVENSON: Ruling on the 31st?
THE COURT: At 2:30. I will waive any reply brief.
MR. STEVENSON: All right, Judge.
MR. BEELER: Your Honor, could I have another date for the ruling? On the 31st—
THE COURT: You are difficult.
MR. BEELER: I am terribly sorry but that is why I carry my calendar, to avoid these conflicts ahead of time. On the 31st I have an irrevocable commitment to [164] a much much lower Court, the Traffic Court—
THE COURT: In the afternoon?
MR. BEELER: No. The afternoon would be fine.
THE COURT: I said the afternoon at 2:30.
MR. BEELER: I am sorry. I am terribly sorry.
THE COURT: Yes.
MR. BEELER: 2:30?

THE COURT: Yes. Do you want to check with Immigration and look up that case that I had about four years ago involving the same question, the question of the right to arrest as agents? I don't remember how I came out. The arrest was—do you remember that case?

AN IMMIGRATION OFFICER: I wasn't involved in it but I have spoken with Mr. Farris who was and—

THE COURT: That is the one that happened down at Joliet, wasn't it, or, no, it was Aurora. Could you get me the name of that so I can look it up and see hom I came out?

AN IMMIGRATION OFFICER: I will do my best to find that for you.

THE COURT: Yes. I mean, the prosecutor would want to know that, too. If I was reversed in it I don't want to get reversed again. If I was correct in it, why, it may have some bearing upon this question.

[165] MR. BEELER: I think I should also be informed. I think that Brady vs. Maryland would indicate defense Counsel should be informed.

THE COURT: I am sure the prosecutor will let you know what the case is so you can argue your head off.

MR. BEELER: Will you tell me if you find out?

MR. STEVENSON: Sure, sure.

MR. BEELER: Thank you.

THE COURT: You know what the problem is, and it occurs a great deal; let's take a draft case, for example, where police officers arrest a boy for a traffic violation and, why, then they ask to see his identification—

MR. STEVENSON: Judge, may I call your attention there to paragraph (b) of that particular statute in which it is stated that any law enforcement officer has the power to arrest under the particular statute, and there is no exception indicated as to whether a state passes some kind of enabling statute. Congress says, "If you are a law enforcement officer of any type, you have the power to arrest under this statute."

I did check the annotated of that to find out if there were any cases construing the power of local or state officers to assist or act as agents of the Government,

and there are aren't any cases construing [166] that, Judge, certainly not your own. I would have been the first to bring up your own case to you.

THE COURT: Yes. It is a difficult thing—

MR. STEVENSON: Right, but the statute as it reads, Judge, and I know it is late, but paragraph (b) is very clear; it doesn't allow for exceptions or qualifications, if you are a law enforcement officer you have the power to arrest under that statute as well as, of course—

THE COURT: But you don't have any cases that describe it?

MR. STEVENSON: No, Judge, other than a clear reading of what the words are, and we all know that the words—

THE COURT: The question is whether or not the phrase "all other officers whose duty it is to enforce criminal laws" meant Federal officers.

MR. BEELER: The question is what laws they are empowered to enforce. The statute is not all that clear, contrary to Mr. Stevenson's suggestion.

MR. STEVENSON: Well, if they would have meant all other Federal officers, Judge, it would seem to me a very simple word to include, as they specifically say the IRS or the Immigration Service in the first paragraph [167] of that paragraph (b), and then they say—

THE COURT: We almost had this problem in the Peaches case involving customs officers. That was years and years ago. That was when I was in the U.S. Attorney's office. That was before Judge Perry. There was a written opinion by him in that.

I don't remember how I came out in that other case, I would like to be consistent and I would like not to make a mistake. It may be that I found there was no authority to pick up the telephone and say "arrest these men for us."

On the other hand, if they are arrested for a local violation and they find that there is a Federal violation, the question of whether or not there was probable cause for the arrest on the local violation may not go

over to really—I mean, any more than if they had been thieves. Do you see what I mean?

If there is any fallacy or mistake by the local police in their arrest on the local violation, but there was an arrest on the local violation, and then they turned the man over to the Federal authorities, that is one thing. It is another thing altogether if there is no authority to arrest on a Federal violation and they didn't arrest on a local.

[168] MR. BEELER: Thank you, your Honor.

THE COURT: Well, you all fight it out.

MR. STEVENSON: All right, Judge. I will wait with great expectation the brief of the defendant.

THE COURT: All right.

MR. STEVENSON: Thank you very much.

MR. BEELER: Thank you, your Honor.

Car No. 130 Mileage: ON _____ OFF _____ Total _____

Car No. 131 Mileage: ON _____ OFF _____ Total _____

Car No. 132 Mileage: ON _____ OFF _____ Total _____

Car No. 134 Mileage: ON _____ OFF _____ Total _____

Car No. 135 Mileage: ON _____ OFF _____ Total _____

Car No. .... Mileage: ON _____ OFF _____ Total _____

TYPES OF TRANSMISSION:
B – Base To Car
C – Car To Base
S – Station To Station
T – Time Test

CAR 130 OPR.# 39-42 NORTH
CAR 134 OPR.# 30 SOUTH
CAR 132 OPR.# 7 ROVING

TIME	OPERATOR	TYPE OF TRANSMISSION	CAR NUMBER	OPERATOR(S)	CAR LOCATION	REFERENCE
******	******				Sgt. W. Zuzulas # 7	Demand pay off LZ
2238	64				Off. M. King S/O #30	M. King
2246	64				Off. P. Tenuto #39	P. Tenuto
2307	64		(2230-0630)		Off. N. Hall #42	N Hall
2346	64		(2400-0800)		Mat. J. Bach #61	J Bach
#####	#####	###	#####	#####	Off. P. Urso	Sick Leave
#####	#####	###	#####	#####	Off. R. Miller.	Off Duty
#####	#####	###	#####	#####	Off. D. Divis	Off Duty
#####	#####	###	(0330-0430)		Off. ~~H. Mahoney~~ W. Pocek	Early
			2300-0300		Sgt. R. A. Weiser 11	
0238	61		0300-0700		Sgt. A. Holler 8	A Holler
2238	64	C	130	42	NORTH	10-41
2315	64	C	134	30	ST CHAS / ADDISON	10-38 HS 4374
2316	64	C	134	30	WESTMORE / ST CHAS	10-6 TS HS 4374
2330	64				#2	10-48
2348	64	C	130	39/42	506 N. PRINCETON	10-6 81491
2350	53	C	134	30	B.F. GOODRICH	10-7 TS BUICK No Lights
2350	53	C	134	30	" "	10-8 " "
2355	53	C	130	39/42	506 N. PRINCETON	10-8 81491
0021	61	C	134	30	4th & 83 & Washington	10-6 EK 9365
0030	61	C	134	30	" "	10-8
0040	61	C	130	39/42		10-39 PL 231 AR
0047	61	C	134	30	Rt. 83 & Washing	10-98 HU 8612
0050	61	C	130	39/42	Three 9 North	10-28 LH 2329
0057	61	C	134	30	Rte-83 & Washing	10-27
0054	61	C	130	39/42	Grove & Steele	10-28 LH 23
0055	61	HH	0329		Lemont Oakdale Parking	5525 Lemont
0109	61	C	134	30/11		10-5 9 to Sta -
0119	61	C	130	39/42	Circo on North - Elm.	10-6 Yellow Cab
0119	61	C	130	39/42	" "	10-8
0134	61	C			#30 - 11	Clear 10-39
0139	61	C	130	30/11		10-39 Compl
0145	61	C	132	7/11	Denny's	10-7
0200	61	C	132	7/11	"	10-8 28-155
0208	61	C	130	39/42	North [illegible]	10-28

TIME	OPERATOR	TYPE OF TRANSMISSION	CAR NUMBER	OPERATOR(S)	CAR LOCATION	REFERENCE
					130 39-42 D 134 30 S 132 11 R	
2230	61	C	130	39 42	North & Addison	10-8
0233	61	C	130	39 42	" "	10-6 CV4433 no Stud
0235	61	CV4433-			Raequal Sanchez, 9727 So. Cue, L.Hyd. '69 Pont	
0237	61	C	132	11	North & Addison	10-23
0242	61	C	132	11	"	10-59 2 Subj.
0242	61	C	130	39 42	" "	10-59 "
0246	61	C	130	39 42	" "	10-59 Complete
334	4			61	Chow	10-7
347	42	C	134	30	Flower Cab	10-28 RT630 10-29
348	42	B	134	30	Randall Berard, 630 N. Stone, CA Grange Pic, 66 DOD Cp.	
349	42	B	134	30	NO HIT LOS/Vcls	
0417	61				#11	10-42
0422	61	C	134	30	Passage	10-7
0450	61	C	134	30	"	10-8
0454	61	C	132	8	"	10-7
0513	61	C	132	8	"	10-8
0520	61	C	134	30		10-28 KT 85-84
0527	61	KT-8584	Shelly		Ted J. Mueller, 2 E. Harrison VB '62 Chevy	
0522	61	C	130	42	Wisconsin & North	10-6 571-403
0526	61	C	130	42	"	10-8
0558	61	C	132	48	J.C. Penny's	10-6 ND4429
0612	61	C	132	48	"	10-8
0614	61	HS-4374	Mary		J. Michael J. Boyce, 905 Westmore, Lombard '65 Ont.	
0627	8	C	138	24	~~Loose Rest~~	10-28 PH 8902
0637	8	C	138	24	LOSS AT REST	10-23
0640	61	PH 8902-			Sharon K. Hildebrand, 936 E. Central VB '50 Chev 4S	

U.S.C.A.—7th Circuit

FEB 5 - 1973

Clerk

EXCERPT OF GOVERNMENT'S BRIEF ON APPEAL, FILED OCTOBER 20, 1972

ARGUMENT

I.

THE BRIEF QUESTIONING OF THE PASSENGERS IN DEFENDANT'S CAR CONSTITUTED A VALID INVESTIGATORY STOP, AND NOT AN ILLEGAL SEARCH.

The government assumes, for purposes of this appeal, that the questioning of the passengers in defendant's car constituted a search of the car to which defendant has standing to object. The government also concedes that the testimony of witnesses discovered during an illegal search can be suppressed as to a person having standing to object to the search. The issue presented to this Court is whether the questioning of the passengers while they were in defendant's car constituted an illegal search, or whether it was a proper and valid investigatory stop.

The government contends that the trial court erred when it ruled that police inquiry should have stopped after defendant, the driver of the car, produced a valid driver's license and it was ascertained by radio that the car belonged to him. In the circumstances of this case, it was entirely proper for the officers to additionally question the passengers in the car.

In *Terry* v. *Ohio*, 392 U.S. 1 (1968), the nation's highest court ruled that police have authority to investigate suspicious persons and make reasonable detentions under circumstances constituting less than probable cause for arrest. This notion of police encounter not amounting to an arrest has been extended by the Supreme Court in its last term. *Adams* v. *Williams*, 407 U.S. 143 (1972). The Adams case is important because of many factors similar

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EXCERPT OF GOVERNMENT'S BRIEF ON APPEAL, FILED JANUARY 9, 1973

* * * *

regarded the issue to be what facts were available to the officers when they first surrounded the car, and before the window was rolled down. Thus, the "specific articulable facts" relied upon by the officers in that case consisted only of an out-of-state license plate on a car parked outside of a pool hall at an hour when the pool hall was open. Manifestly, the facts in this case are stronger than those in the *Nicholas* case.

Defendant in his brief relies upon the actions of the officers in arresting defendant and his passengers and transporting them to the police station (D. Br. 14, 24). In so doing, defendant overlooks both what is being suppressed in this case, and his lack of standing to object to the transportation of his passengers to the police station. See appellant's brief, Argument II. The issue in this case is whether the questioning of the passengers in the defendant's car was proper, for this is the only "search" to which he has standing to object, and is from this that the testimony of those passengers, the thing sought to be suppressed, flows.

II.

THE QUESTIONING OF DEFENDANT'S PASSENGERS DID NOT GO BEYOND THE SCOPE OF THE REASONABLE INQUIRY PERMITTED BY *TERRY*.

As defendant points out, this is not a case which involves a "frisk" (D. Br. 13). This case involves only the asking of those reasonable questions which, under *Terry* v. *Ohio*, *supra*, are the justification for the investigatory stop in the first place.

It is important in the resolution of this case to understand that *Terry* v. *Ohio*, *supra*, involved more than a mere frisking of a suspect for weapons. The so-called "protec- * * *

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SUPREME COURT OF THE UNITED STATES

No. 73-820

UNITED STATES, PETITIONER

v.

PASCUAL GUANA-SANCHEZ

ORDER ALLOWING CERTIORARI—Filed June 17, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE, 1974 554618 24